TITLE IV.

COUNTY PLANNING AND LAND DEVELOPMENT

CHAPTER

CHAPTER 7

THE GENERAL PLAN FOR THE COUNTY OF KAUA'I

(The purpose of this Chapter is to adopt a General Plan setting forth in graphic and textual form, policies to govern the future physical development of the county. The General Plan shall serve as a guide to all future Council action concerning land use and development regulations, urban renewal programs, and expenditures for capital improvements.)

ARTICLE 1. GENERAL PROVISIONS

Sec. 7-1.1 Title.

This Chapter shall be known and may be cited as "The General Plan for the County of Kaua`i." (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-1.2 Purpose.

Pursuant to the provisions of the Charter for the County of Kaua`i, the General Plan sets forth in graphics and text, policies to govern the future physical development of the county. The General Plan is intended to improve the physical environment of the County and the health, safety and general welfare of Kaua`i's people.

The General Plan states the County's vision for Kaua`i and establishes strategies for achieving that vision. The strategies are expressed in terms of policies and implementing actions. They may be augmented and changed as new strategies are developed.

The General Plan is a direction-setting, policy document. It is not intended to be regulatory. It is intended to be a guide for future amendments to land regulations and to be considered in reviewing specific zoning amendment and development applications.

The vision, the maps and text policies, and the implementing actions are intended to guide county actions and decisions. In addition, the maps and text policies are intended to guide the County in specific types of actions: making revisions to land use and land development regulations; deciding on zoning changes; preparing and adopting Development Plans and Public Facility Plans; and preparing and adopting capital improvement plans. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-1.3 Definitions.

"Charter" means the Charter of the County of Kaua`i, as amended.

"CIP" means the Capital Improvement Program of the County of Kaua`i, which is part of the annual budget ordinance and programs appropriations and funding for capital improvements for six years and beyond.

"Comprehensive Zoning Ordinance" means the Comprehensive Zoning Ordinance of the County of Kaua`i, Chapter 8, Kaua`i County Code 1987, as amended.

"Council" means the Council of the County of Kaua'i.

"Development" means any public improvement project, or any public or private project requiring a permit or approval from the Planning Department or Planning Commission.

"Development Plan" means a detailed plan for a specific geographic area of the County of Kaua'i, as defined by Sec. 14.07 of the Charter and as further defined herein.

"General Plan" means the General Plan for the County of Kaua'i, including the vision, policies, implementing actions and Land Use and Heritage Resources maps.

"Implementing Action" means a strategy to implement a policy, which may include recommendations for amending ordinances and rules.

"Owner" means the holders of at least seventy-five percent (75%) of the equitable and legal title of a lot.

"Planning Commission" means the Planning Commission of the County of Kaua'i.

"Planning Department" means the Planning Department of the County of Kaua'i.

"Planning Director" means the Director of the Planning Department of the County of Kaua'i.

"Policy" means a statement in the General Plan Policies Sections intended to guide the County in achieving the vision

"Public facility" means a building, road, pipeline, or other capital improvement that is constructed by the County of Kaua'i in order to provide a service to the public.

"Special Management Area Rules and Regulations" means the Special Management Area Rules and Regulations of the County of Kaua'i, as amended.

"Special Development Plans" means the Special Development Plans, Chapter 10, Kaua'i County Code 1987, as amended.

"Subdivision Ordinance" means the Subdivision Ordinance for the County of Kaua'i, Chapter 9, Kaua'i County Code 1987, as amended.

"Vision" means a preferred future as described in Chapter 2 of the text of the General Plan.

"Zoning Amendment" means a change of the zoning district boundaries in relation to a specific parcel or parcels of land. (Ord. No. 753, November 30, 2000)

Sec. 7-1.4 Applicability.

(a) All actions and decisions undertaken by the County Council and the County Administration, including all County departments, agencies, Boards and Commissions, shall be guided by the vision statement, policies, and the implementing actions of the General Plan.

(b) Ordinances and rules that relate to the following shall be guided by the policies of the General Plan:

(1) Development Plans;

(2) Public Facility Plans;

(3) Land use policies and regulations, including but not limited to zone changes, zoning regulations, subdivision regulations, and SMA rules and regulations;

(4) Site development and environmental regulations, such as grading and drainage regulations; and

(5) The six-year Capital Improvement Program. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-1.5 Adoption.

(a) The plan document on file with the County Clerk entitled "Kaua`i General Plan", including the maps and text policies, vision and implementing actions dated as of the effective date of this ordinance, is hereby adopted by reference and made a part of this ordinance.

(b) Upon adoption of this ordinance, prior resolutions and ordinances relating to the 1984 General Plan are superseded; provided that conditions of approval attached to General Plan Amendment Ordinances adopted prior to the adoption of this General Plan shall remain in effect. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-1.6 Administration.

The Planning Department shall administer the provisions of this ordinance and the General Plan in accordance with the provisions of the County Charter. (Ord. No. 753, November 30, 2000)

Sec. 7-1.7 Interpretation.

The Planning Director shall interpret the General Plan and the consistency of a County action or a proposed development with the General Plan, subject to the review of the Planning Commission. (Ord. No. 753, November 30, 2000)

Sec. 7-1.8 Review of the General Plan.

The Planning Department shall undertake a comprehensive review of the General Plan within ten years of the date of adoption and shall report its findings and recommended revisions to the Planning Commission and the County Council. (Ord. No. 753, November 30, 2000)

ARTICLE 2. PLANNING SYSTEM

Sec. 7-2.1 Planning System.

The County of Kaua`i adopts plans and employs various methods of implementation. The various elements comprise the County of Kaua`i Planning System. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-2.2 General Plan.

(a) Through text and graphic provisions, the General Plan establishes policy for the long-range development, conservation, use and allocation of land, water, and other resources in the County of Kaua'i.

(b) The General Plan includes but is not limited to the following elements:

(1) The Vision Statement describes the desired state of the County 20 years in the future.

(2) The Policies establish the framework for the physical development of the County. They serve as guidelines for the location of general land uses and public facilities, the various aspects of conservation and development of the physical environment, programs, and the allocation of resources. The policies consist of both textual and graphic elements, such as maps and illustrations. Descriptive sections and policy rationale sections provide context and amplify the intent of the policies.

(3) The Implementing Actions set forth recommended courses of action to carry out the policies. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-2.3 Development Plan.

(a) A Development Plan is intended to direct physical development and public improvements within a specific geographic area.

(b) Each Development Plan shall state a specific purpose and set of objectives in relation to a specified geographic area. A Development Plan may be long-range and comprehensive, or it may be focused on specific, short-term objectives.

(c) A Development Plan may contain detailed guidance for land use and zoning, circulation systems, architectural design, public facilities, or other matters relating to the physical development of the planning area.

(d) In accordance with the Charter, a Development Plan shall be submitted to the Planning Commission for review and recommendation and to the County Council for adoption by ordinance. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-2.4 Public Facility Plan.

(a) Public facility plans shall include but not be limited to the following types:

(1) A system plan is a long-range comprehensive plan for a public service system that is islandwide in scope. The purpose of the system plan is to establish policy and set priorities for services, facilities, capital improvements, and funding, considering the needs and capabilities of the various geographic areas.

(2) A facility plan is a master plan for the development of a specific facility, which may include a single capital improvement project or a series of capital improvements to be undertaken over a longer period of time.

(b) A Public Facility Plan shall be submitted to the County Council for adoption by resolution. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-2.5 Land Use Regulations.

The County regulates land use through the Comprehensive Zoning Ordinance and other ordinances and rules.

(a) Land use regulations consist of development standards, application procedures, and criteria for granting permits or other approvals. They include but are not limited to the following:

(1) Comprehensive Zoning Ordinance
(2) Subdivision Ordinance
(3) Special Development Plan Ordinances
(4) Special Management Area Rules and Regulations

(b) Amendments and updates of land use regulations and maps shall be consistent with the policies of the General Plan.

(c) Reviews of specific zoning amendment and development applications by government and private organizations shall be guided by the General Plan and shall consider the extent to which a proposed development supports the vision, policies and implementing actions of the General Plan. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-2.6 Capital Improvement Program Review.

(a) In consultation with the other departments, the Planning Department shall establish a systematic method of organizing capital improvement and service priorities, to be used in the formulation of the six-year Capital Improvement Program and County appropriations for capital improvements.

(b) The Planning Department shall review the annual Capital Improvement Program and each County budget submittal for conformance to stated CIP priorities and shall evaluate each project according to the established priorities. The Planning Department evaluation shall be submitted to the County Council as part of the annual budget. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

ARTICLE 3. AMENDMENT OF THE GENERAL PLAN

Sec. 7-3.1 In General.

The General Plan Ordinance or the General Plan of the County of Kaua'i may be amended by ordinance, in accordance with the Charter. An amendment may change provisions of this ordinance; text provisions or map designations of the General

Plan document; or any of these in combination. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-3.2 Initiation.

(a) An amendment may be initiated by the Planning Director, by the Planning Commission, or by the Council.

(b) An amendment may be initiated by the verified petition of an owner or a person fully authorized by the owner of property affected by the proposed amendment.

(1) The petition shall be of such form and include such information and exhibits as may be prescribed by the Planning Director. The petition shall be filed with the Planning Department, accompanied by a filing fee of One hundred dollars ($100).

(2) Within 15 working days of a filing, the Planning Director shall accept or reject the petition for amendment, based on compliance with amendment application requirements. The petitioner shall be notified in writing of the acceptance decision. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-3.3 Public Hearings.

The Planning Commission shall hold at least one (1) public hearing on any proposed amendment.

(a) Except for amendments relating to government or public utility developments and amendments initiated by the Council or Planning Commission, proposed amendments shall be considered for public hearings twice a year.

(1) The Planning Commission shall conduct public hearings on proposed General Plan amendments only during the months of January and July. At any public hearing, any number of petitions may be heard provided that each petition is heard separately. In the event the proposed amendments cannot all be heard in those months, the Planning Commission shall continue the hearing period to the following month or months.

(2) Petitions and resolutions accepted by the Planning Commission not later than sixty (60) days prior to the review months of January and July shall be considered by the Planning Commission and Council for review and action.

(b) At least fifteen (15) days prior to the public hearing, the Planning Commission shall give notice thereof to the petitioner and also by publishing at least once in a newspaper of general circulation published in the County the time, date and place of such hearing, its purpose and a description of any property which may be involved.

(c) In the case of a petition for amendment of the General Plan Land Use Map, the petitioner, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the

County of Kaua'i, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five percent (85%) of all parcels of real property within (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

(1) date;
(2) time;
(3) location;
(4) purpose;
(5) description or sketch of property involved; and
(6) explanation of the amendment process with emphasis on forthcoming Council action.

At least seven (7) days prior to the hearing date, the petitioner shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to whom such notices were sent.

Should the petitioner fail to submit the affidavit within the time required, the public hearing shall be postponed, and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The petitioner shall be required to pay for the republication costs and shall follow the notice requirements of this paragraph in the renotification of all persons previously notified.

(d) Where specific General Plan amendments are initiated by the Planning Commission or the Council, the public hearing notice requirements of subsection (c) above shall apply, except that, in the consideration of General Plan Updates, the requirements of subsection (b) above shall apply.

(e) The Planning Department shall mail a copy of the resolution or petition initiating the change together with other relevant information and a request for comments, to community associations and other civic organizations that have filed written requests with the Planning Department. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-3.4 Consideration.

In considering an amendment that proposes to change the General Plan Ordinance or the text or maps of the General Plan, the Planning Commission shall consider the purpose and probable outcomes of the proposed amendment in relation to the various provisions of the General Plan. In order to recommend

adoption of an amendment to the General Plan, the Planning Commission must find that the amendment is consistent with other elements of the General Plan and that it advances the health, safety and general welfare of the people of Kaua'i. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-3.5 Planning Commission Action.

After the conclusion of the public hearing the Planning Commission shall recommend approval, approval with modifications, or denial of a proposed amendment and shall submit a report of its findings and recommendation to the Council.

Such report shall be submitted within ninety (90) days after the public hearing, or within such longer period as may be agreed upon by the Planning Commission and the initiator of the proposed amendment. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-3.6 County Council Action.

Within seventy-five (75) days after receipt (time stamp) of the Planning Commission report, the Council shall hold a public hearing and shall give notice thereof by one (1) publication in a newspaper of general circulation published within the County at least fifteen (15) days prior to such hearing. After conclusion of the hearing, the Council may adopt the proposed amendment or any part thereof by a majority vote of the Council in such form as said Council deems advisable. A proposed amendment that does not receive affirmative action by a majority of the Council shall be deemed denied.

When an amendment initiated by petition is denied, the same or a substantially similar amendment may not be initiated by petition sooner than one (1) year following such denial. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

Sec. 7-3.7 Withdrawal; Abandonment.

Any petition for an amendment may be withdrawn upon the written application of the initiator. The Council or the Planning Commission, as the case may be, may, by motion abandon any proceedings for an amendment initiated by its own resolution or intention.

Such withdrawal or abandonment may be made only when such proceedings are before such body for consideration. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

ARTICLE 4. TRANSITION

Sec. 7-4.1 Existing Zoning and Subdivision Ordinances.

(a) All existing zoning amendment ordinances, including but not limited to all existing land use permits, and all

existing subdivisions, shall continue to remain in effect following the enactment of this ordinance.

(b) Existing land use regulations, including but not limited to those in the Special Development Plans, the Comprehensive Zoning Ordinance, and the Subdivision Ordinance, shall continue to regulate the use of land within demarcated zoning districts until such time as the ordinances may be amended to be consistent with the General Plan.

(c) Notwithstanding adoption of the General Plan, land use permits and subdivisions shall continue to be subject only to applicable ordinances and rules and regulations in effect at the time the application is accepted for processing. (Ord. No. 461, June 21, 1984; Ord. No. 753, November 30, 2000)

CHAPTER 8

COMPREHENSIVE ZONING ORDINANCE

(The purpose of this Chapter is to provide regulations and standards for land development and the construction of buildings and other structures in the County of Kauai. By utilizing the findings and analysis of the County General Plan, this Chapter establishes several land districts and delineates the respective types of permitted uses and development that can take place in those districts. The regulations and standards prescribed by this Chapter are intended to promote development that is compatible with the Island's scenic beauty and environment and to preclude inadequate, harmful or disruptive conditions that may prove detrimental to the social and economic well-being of the residents of Kauai.)

ARTICLE 1. GENERAL PROVISIONS

Sec. 8-1.1 Title.

This Chapter shall be known as and may be cited as "The Comprehensive Zoning Ordinance for the County of Kauai" and its official abbreviated designation shall be "CZO". (Ord. No. 164, August 17, 1972; Sec. 8-1.1, R.C.O. 1976)

Sec. 8-1.2 Purpose.

This Chapter is adopted for the purpose of:

(a) Implementing the intent and purpose of the adopted General Plan.

(b) Regulating the use of buildings, structures and land for different purposes.

(c) Regulating location, height, bulk and size of buildings and structures, the size of yards, courts and other open spaces.

(d) To maintain the concept of Kauai as "The Garden Isle", thus assuring that any growth will be consistent with the unique landscape and environmental character of the Island.

(e) To insure that all physical growth is carried out so as to maintain the natural ecology of the Island to the extent feasible.

(f) To create opportunities for a greater fulfillment of life through the development of a broad spectrum of educational and cultural pursuits.

(g) To promote and protect the health, safety and welfare of all residents.

(h) To provide opportunities for desirable living quarters for all residents in all income levels.

(i) To recognize those aspects of the Island and its people which are historically significant, and to preserve and promote them as a continuing expression of the Island's physical and social structure.

(j) To guide and control development to take full advantage of the Island's form, beauty and climate, and preserve the opportunity for an improved quality of life.

(k) To protect, maintain and improve the agriculture potential of land located in the County. (Ord. No. 164, August 17, 1972; Sec. 8-1.2, R.C.O. 1976)

Sec. 8-1.3 Nature Of County Zoning Ordinance.

(a) This Zoning Ordinance consists of the establishment of six (6) major Use Districts in conjunction with two (2) Special Districts within the territory of the County of Kauai. (This Chapter includes regulations concerning the uses permissible within each of the six (6) Use Districts and concerning the special conditions under which the uses may be developed or created within each of the two (2) special districts.) The boundaries of the Use Districts are established on the Zoning Maps of the County as specified in Sec. 8-2.3 of this Chapter. The boundaries of the special districts are established on the Zoning Maps or on the Constraint Map.

(b) The districts established and located by this Chapter are based upon the findings and analysis utilized in the General Plan for the County of Kauai. The designations of the Use Districts reflect in part the elements of the environment and society and, in addition, reflect appropriate interrelationships of land use, transportation, utilities, public services, existing development, recreational and employment opportunities, economic conditions, resource management, and population.

(c) The designations of the Constraint and Special Treatment districts reflect:

(1) The capability of the land within the County to accommodate disturbances;

(2) Potential threats to health, safety and welfare, social and aesthetic values; and

(3) Relative development of use potential because of existing parcel conditions or unique or limited natural resources.

(d) The intent of the regulations governing all districts is to be permissive within the minimum requirements and performance criteria specified for each district. Development, use or construction should be permitted where it can be established by following the provisions of this Chapter so that the development and construction for a specific use or combination of uses can be accommodated within the specific physical and social conditions of a particular location in such a manner that it will not create the inadequate, harmful or disruptive conditions that formed the basis of the establishment of regulations of any district.

(e) The Use Districts allocate and regulate the various functions necessary to a diverse and viable society and specify the performance required to develop land and create improvements consistent with those functions and their interrelationships.

(f) The Residential District regulates the number of people living in a given area by specifying the maximum allowable number of dwelling units that may be developed on any given parcel of land. In order not to differentiate

between economic groups or life-styles, a reasonable flexibility in the type of dwelling units and their placement on the land has been provided.

(g) Commercial, Industrial and Resort Districts recognize the specific nature of such uses and allocate their location in relation to land suitability and established or potential patterns of residential uses and other activities, such as transportation and community facilities.

(h) The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels.

(i) The Open District is established and regulated to create and maintain an adequate and functional amount of predominantly open land to provide for the recreational and aesthetic needs of the community or to provide for the effective functioning of land, air, water, plant and animal systems or communities.

(j) Overlaying the regulation of development or use in any or all of the Use Districts are additional special regulations which relate more specifically to the land and the existing community structure. These special regulations have been defined in the Constraint District and the Special Treatment District and may modify the manner in which uses regulated under the Use Districts may be developed or may require special performance in the development.

(k) The Constraint District specifies the additional performance required when critical or valuable physical, ecologic, or biologic characteristics of the environment exist on the same parcel where particular functions or uses may be developed.

(l) The Special Treatment District specifies the additional performance required when critical or valuable social or aesthetic characteristics of the environment or community exist in the same area as a parcel where particular functions or uses may be developed.

(m) Any or all of these districts may overlap any Use Districts, creating accumulated regulations which more nearly relate to the conditions of the specific location where the development or use may occur.

(n) Since the degree and type of the development or use may determine the magnitude of public concern, the procedures for administering the requirements of use and condition have been structured to permit smaller developments, while insuring that the effects of larger developments are adequately examined. (Ord. No. 164, August 17, 1972; Sec. 8-1.3, R.C.O. 1976)

Sec. 8-1.4 Application Of Regulations.

(a) For the purposes of this Chapter, the County of Kauai shall include the districts of Waimea, Koloa, Lihue, Kawaihau and Hanalei as described in Section 4-1(4), H.R.S.

(b) Unless otherwise expressly prohibited by law, the provisions of this Chapter shall apply to all areas within the County boundaries.

(c) In administering and applying the provisions of this Chapter, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Chapter.

(d) Nothing in this Chapter shall regulate the placement, design and construction of utility poles, towers and transmission lines by a public utility company as defined in Section 269-1, H.R.S., provided, that the poles and towers shall be no higher than twenty (20) feet above the height limits for structures applicable in the Use District in which the poles and towers are constructed.

(e) Nothing in this Chapter shall regulate the minimum size of lots in a subdivision which are to be used for government or public utility facilities. The creation of such lots shall be in compliance with the provisions of Chapter 9, County Subdivision Ordinance, of the Code.

(f) Nothing in this Chapter shall prohibit the use of factory built housing or trailer homes as permitted dwellings, buildings or structures for the purpose of human habitation or occupancy within the various Use Districts provided that all such factory built housing and trailer homes must first:

(1) Meet all applicable development standards, density limitation and other such requirements for the particular Use District;

(2) Be permanently affixed to the ground;

(3) Have had their wheels and axles, if any, removed;

(4) If licensed pursuant to Hawaii Revised Statutes Chapter 249, have been registered as a stored vehicle in accordance with Hawaii Revised Statutes Section 249-5;

(5) Meet the standards and requirements contained in Section 12-4.4 of Chapter 12, Building Code; and

(6) Meet all other applicable governmental rules, regulations, ordinances, statutes and laws.

(g) Recreational trailers may be used as temporary dwellings for travel, recreational or vacation purposes in accordance with Chapter 16 (Recreational Trailer Camps) of Title 11, Administrative Rules, Department of Health, State of Hawaii, or any other State or County laws, ordinances or rules relating to the use of public or private lands, parks or camp grounds for camping or recreational purposes. Except as provided herein, no recreational trailer shall be used as a dwelling or building for the purpose of human

habitation or occupancy. (Ord. No. 164, August 17, 1972; Sec. 8-1.4, R.C.O. 1976; Ord. No. 443, December 28, 1982; Ord. No. 484, February 18, 1986)

Sec. 8-1.5 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Accessory Building" or "Structure" means a building or structure which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot or parcel.

"Accessory Use" means a use customarily incidental, appropriate and subordinate to the main use of the parcel or building.

"Adult Family Boarding Home" means any family home providing for a fee, twenty-four (24) hour living accommodations to no more than five (5) adults unrelated to the family, who are in need of minimal 'protective' oversight care in their daily living activities. These facilities are licensed by the Department of Health, State of Hawaii under the provisions of sections 17-883-74 to 17-883-91.

"Adult Family Group Living Home" means any family home providing twenty-four (24) hour living accommodations for a fee to five (5) to eight (8) elderly, handicapped, developmentally disabled or totally disabled adults, unrelated to the family, who are in need of long-term minimal assistance and supervision in the adult's daily living activities, health care, and behavior management. These facilities are licensed by the Department of Health, State of Hawaii, under the provisions of sections 17-883-74 to 17-883-91.

"Agriculture" means the breeding, planting, nourishing, caring for, gathering and processing of any animal or plant organism for the purpose of nourishing people or any other plant or animal organism; or for the purpose of providing the raw material for non-food products. For the purposes of this Chapter, Agriculture shall include the growing of flowers and other ornamental crops and the commercial breeding and caring for animals as pets.

"Alley" means a public or permanent private way less than fifteen (15) feet wide for the use of pedestrians or vehicles which has been permanently reserved and which affords, or is designed or intended to afford the secondary means of access to abutting property.

"Animal Hospital" means an establishment for the care and treatment of small animals, including household pets.

"Apartment" See Dwelling, Multiple Family.

"Apartment-Hotel" means a building or portion thereof used as a hotel as defined in this Section and containing the combination of individual guest rooms or suite of rooms with apartments or dwelling units.

"Applicant" means any person having a controlling interest (75% or more of the equitable and legal title) of a lot; any person leasing the land of another under a recorded lease having a stated term of not less than five (5) years; or any person who has full authorization of another having the controlling interest or recorded lease for a stated term of not less than five (5) years.

"Aquaculture" means the growing and harvesting of plant or animal organisms in a natural or artificial aquatic situation which requires a body of water such as a pond, river, lake, estuary or ocean.

"Base Flood" means the flood, from whatever source, having a one percent (1.0%) chance of being equalled or exceeded in any given year, otherwise commonly referred to as the 100-year flood.

"Base Flood Elevation" means the water surface elevation of the base flood.

"Building" means a roofed structure, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind. The word "building" includes the word "structure".

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, mausoleums, mortuaries and crematoriums, provided the crematorium has the approval of the Department of Health, Planning Commission and Council when operated in conjunction with and within the boundary of the cemetery.

"Center Line" See "Street Center Line".

"Church" means a building designed for or used principally for religious worship or religious services.

"Coastal High Hazard Area" means the area subject to high velocity waters, including but not limited to coastal and tidal inundation or tsunami. The area is designated on a FIRM as Zone VE.

"Commercial Use" means the purchase, sale or other transaction involving the handling or disposition (other than that included in the term "industry" as defined in this Section) of any article, substance or commodity for profit or a livelihood, including in addition, public garages, office buildings, offices of doctors and other professionals, public stables, recreational and amusement enterprises conducted for profit, shops for the sale of personal services, places where commodities or services are sold or are offered for sale, either by direct handling of

merchandise or by agreements to furnish them but not including dumps and junk yards.

"Compatible Use" means a use that, because of its manner of operation and characteristics, is or would be in harmony with uses on abutting properties in the same zoning district. In judging compatibility the following shall be considered: intensity of occupancy as measured by dwelling units per acre, pedestrian or vehicular traffic generated, volume of goods handled, and other factors such as, but not limited to: vibration noise level, smoke, odor or dust produced or light or radiation emitted.

"Conforming" means in compliance with the regulations of the pertinent district.

"Construction, Commencement of" means the actual placing of construction materials in their permanent position, fastened in a permanent manner.

"Contiguous Lots or Parcels in Common Ownership" means more than one (1) adjoining lot or parcel each of which is owned in full or part by the same person, or his representative.

"County Engineer" means the County Engineer of the Department of Public Works of the County of Kauai.

"Cultivation" means the disturbance by mechanical means of the surface soil to a depth less than two (2) feet where the original grade and shape of the land is not substantially altered, for the purpose of planting and growing plants.

"Day Care Center" means any facility which complies with the State of Hawaii licensing requirements where seven or more children under the age of 18 are cared for without overnight accommodations at any location other than their normal place of residence. This term includes child care services and other similar uses and facilities consistent with this definition, and not covered by the "Family Child Care Home" definition.

"Day Use Areas" means land, premises and facilities, designed to be used by members of the public, for a fee or otherwise, for outdoor recreation purposes on a daily basis. Day use areas include uses and facilities such as parks, playgrounds, picnic sites, tennis courts, beaches, marinas, athletic fields, and golf courses.

"Density" means the number of dwelling units allowed on a particular unit of land area.

"Developed Campgrounds" means land or premises designed to be used, let or rented for temporary occupancy by campers traveling by automobile or otherwise and which contain such facilities as tent sites, bathrooms or other sanitary facilities, piped water installations, and parking areas, but not including mobile home parks. Developed campgrounds may include facilities for the temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential uses at no more than six (6) vehicles per acre.

"Distance, Measurement of" means unless otherwise specified, all distances other than height shall be measured in a horizontal plane. Height shall be measured vertically.

"Diversified Agriculture" means the growing and harvesting of plant crops for human consumption which does not involve a long-range commitment to one (1) crop. Diversified Agriculture includes truck gardening and the production of fresh vegetables, and minor fruit or root crops such as guava or taro.

"Division of Land" means the division of any lot or parcel or portion thereof into two (2) or more lots, plots, sites or parcels for the purpose, whether immediate or future, of sale, transfer, lease, or building development. It includes subdivisions and resubdivision and other divisions of land and may relate to the process of dividing land or to the land or territory divided.

"Dry Cleaning" means the process of removing dirt, grease, paints and other stains from wearing apparel, textile fabrics, rugs and other material by the use of nonaqueous liquid solvents, flammable or nonflammable, and it may include the process of dyeing clothes or other fabrics or textiles in a solution of dye colors and nonaqueous liquid solvents.

"Dump" means a place used for the discarding, disposal, abandonment, or dumping of waste materials.

"Dwelling" means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation.

"Dwelling, Multiple Family" means a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

"Dwelling, Single Family Attached" means a building consisting of two (2) or more dwelling units designed for occupancy by two (2) or more families living independently of each other where each unit is structurally independent although superficially attached or close enough to appear attached.

"Dwelling, Single Family Detached" means a building consisting of only one (1) dwelling unit designed for or occupied exclusively by one (1) family.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities, within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens.

"Easement" means an acquired privilege or right of use or enjoyment which an individual, firm, corporation, person, unit of government, or group of individuals has in the land of another.

"Existing grade" means the existing grade or elevation of the ground surface which exists or existed prior to manmade alterations such as grading, grubbing, filling or excavating.

"Factory Built Housing" means any structure or portion thereof which is: designed for use as a building or dwelling; prefabricated or assembled at a place other than the building site; and capable of complying with the standards and requirements contained in Section 12-4.4 of Chapter 12, Building Code.

"Family" means an individual or group of two (2) or more persons related by blood, adoption or marriage living together in a single housekeeping unit as a dwelling unit. For purposes of this Chapter, family shall also include a group of not more than five (5) individuals unrelated by blood, adoption or marriage.

"Family Care Home" means any care home occupied by not more than five (5) care home residents. These facilities are licensed by the Department of Health, State of Hawaii, under the provisions of sections 17-883-74 to 17-883-91.

"Family Child Care Home" means providing child care services and other similar uses consistent with this definition where six or fewer children under the age of 18 are cared for in a private dwelling unit without overnight accommodations at any location other than the children's normal place of residence and which complies with State of Hawaii licensing requirements.

"Finished grade" means the final elevation of the ground surface after manmade alterations such as grading, grubbing, filling or excavating have been made on the ground surface.

"Flag Lots" means a lot or parcel bounded by at least six (6) sides and describing two (2) distinct but contiguous areas, one (1) of which is the primary development area used to determine lot area, width and proportion, and the other of which is an appendage normally used as access from a street to the primary development area. The primary development area is referred to as the "flag" portion of the lot, and the appendage is referred to as the "pole" portion of the lot.

"Flammable Liquid" means any liquid having a flash point below two hundred degrees Fahrenheit (200 degrees F.) and having a vapor pressure not exceeding forty (40) pounds per square inch (absolute) at one hundred degrees Fahrenheit (100 degrees F.).

"Flood Fringe Area" means the portion of the flood plain outside the floodway, designated as AE, AO, and AH Zones on the FIRM.

"Flood Insurance Rate Map" means the official map on which the Federal Insurance Administration has delineated the areas of special flood hazards, the risk premium zones applicable, base flood elevations, and floodways.

"Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Forestry" means the growing or harvesting of trees for timber or wood fibre purposes.

"Frontage" means that portion of a parcel of property which abuts on a road, street, or highway.

"Front, Building" means the side of a building or structure nearest the street on which the building fronts, or the side intended for access from public area. In cases where this definition is not applicable, the Planning Director shall make the determination.

"Garage" means a building or structure or a portion thereof in which a motor vehicle is stored, housed, kept, repaired or serviced.

"Garage, Automobile Repair" means a garage wherein major repairs are made to motor vehicles or in which any major repairs are made to motor vehicles other than those normally used by the occupants of the parcel on which the garage is located.

"Garage, Automobile Storage" means any garage used exclusively for the storage of vehicles.

"General Flood Plain Area" means the area consisting of the approximate flood plain area as delineated on the flood maps, where detailed engineering studies have not been conducted by the Federal Insurance Administration to delineate the flood fringe and floodway and identified as A, X, and D Zones on the FIRM.

"Grade" with reference to a street or land surface, means the gradient, the rate of incline or decline expressed as a percent.

"Grazing" means the production or use of vegetative land cover for the pasturing of animals.

"Ground Level" means with reference to a building, the average elevation of the finished ground levels adjoining the walls of a building.

"Guest House" means a building used for dwelling purposes by guests with a floor area of no more than five hundred (500) square feet that contains no kitchen and is located on a parcel of at least nine thousand (9,000) square feet that contains one (1) or more dwelling units.

"Height-Building". See appropriate Chapter provisions.

"Height, Fence or Screen" means the vertical distance measured from the ground level to the top of the fence. For the purpose of applying height regulations, the average height of the fence along any unbroken run may be used provided the height at any point is not more than ten percent (10%) greater than that normally permitted.

"Height, Wall" means the vertical distance to the wall plate measured from the ground level at the bottom of the wall.

"Historic Resource" means any property, area, place, district, building, structure, site, neighborhood, scenic viewplane or other object having special historical, cultural, architectural or aesthetic value to the County of Kauai.

"Home Business" means any use customarily conducted entirely within a dwelling and carried on solely by the inhabitants thereof, in connection with which there are: no display from the outside of the building; no mechanical equipment used except as is normally used for domestic or household purposes; and no selling of any commodity on the premises; which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The office, studio, or occupational room of an architect, artist, engineer, lawyer or other similar professional person; a family child care home; business conducted entirely by phone or by mail (not involving frequent bulk shipments); and an office for "homework" of a person in business elsewhere; all shall be permitted as home businesses except that no activity involving, encouraging, or depending upon frequent visits by the public and no shop or clinic of any type shall be deemed to be a home business.

"Horizontal Property Regime" means the forms of development defined in the Horizontal Property Act, Chapter 514A, H.R.S.

"Hospital" means any building or portion thereof to which persons may be admitted for overnight stay or longer and which is used for diagnosis, care or treatment of human illness or infirmity or which provides care during and after pregnancy.

"Hotel" means any building containing six (6) or more rooms intended or designed to be used, or which are used, rented or hired out to be occupied for sleeping purposes by guests when the rooms are open to the occupancy by the general public on a commercial basis whether the establishment is called a hotel, resort hotel, inn, lodge or otherwise which rooms do not constitute dwelling units.

"HPR Commission" means the Historic Preservation Review Commission.

"Indoor Amusement, Commercial" means buildings and structures designed to be used by members of the public that contain amusement facilities such as movie theaters, bowling alleys, pool halls and skating rinks.

"Industry" means the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in a manner so as to change the form, character or appearance thereof, and storage other than that accessory to a nonmanufacturing use on the same parcel including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprises.

"Intensive Agriculture" means the growing and harvesting of plant crops for human consumption or animal feeds primarily for sale to others and involving the long-range commitment to one crop such as sugar, pineapple, sorghum, or grain.

"Junk" means any worn-out, cast-off, or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use; any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered junk.

"Junk Yard" means any open space in excess of two hundred (200) square feet, used for the breaking up, dismantling, sorting, storage or distribution of any scrap, waste material or junk.

"Kitchen" means any room used or intended or designed to be used for cooking and preparing food.

"Land Coverage" means a man-made structure, improvement or covering that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Structures, improvements and covering include roofs, surfaces that are paved with asphalt, stone, or the like such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration, such as parking of cars and heavy and repeated pedestrian traffic.

"Landscaping" means the modification of the landscape for an aesthetic or functional purpose. It includes the preservation of existing vegetation and the continued maintenance thereof together with grading and installation of minor structures and appurtenances.

"Land Use" and "Use of Land" includes "building use" and "use of building".

"Livestock" means domestic animals of types customarily raised or kept on farms for profit or other productive purposes.

"Loft" means the floor placed between the roof and the floor of the uppermost story within a single family detached dwelling, the floor area of which is not more than one-third (1/3) the floor area of the story or room in which it is placed.

"Lot" means a portion of land shown as a unit on an approved and recorded Subdivision Map.

"Lot Area" means the total of the area, measured in a horizontal plane, within the lot boundary lines.

"Lot Coverage". See "Land Coverage".

"Lot Length" means the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

"Lot Width" means the average horizontal distance between the side lot lines measured at right angles to the line followed in measuring the lot depth.

"Manager" means the Manager and Chief Engineer of the Water Department of the County of Kauai.

"Mineral Extraction" means any excavation or removal of natural materials not related to or not occasioned by an impending development of the site of the excavation.

"Motel" means a group of attached or detached buildings containing rooms, designed for or used temporarily by automobile tourists or transients, with garages attached or parking space conveniently located to each unit, including auto court, tourist court or motor lodge, or otherwise, which rooms do not constitute dwelling units.

"Non-conforming Building and Structure" means a building or portion thereof lawfully existing at the time of the adoption of this Zoning Ordinance or as a result of any subsequent amendment and which does not comply with the regulations of the zoning district in which it is located.

"Non-conforming Use" means a lawful use of a building or land existing at the time of the adoption of this Ordinance or as a result of any subsequent amendment, and which does not comply with the regulations for the zoning district in which it is located.

"Nursery" means the growing, collecting or storing of plants for the purpose of selling to others for transplanting.

"Nursing Home" means a facility established for profit or nonprofit, which provides nursing care and related medical services on a twenty-four (24) hour per day basis to two (2) or more individuals because of illness, disease, or physical or mental infirmity. It provides care for those persons not in need of hospital care.

"Open Space" means the portion or portions of a parcel unoccupied or unobstructed by buildings, paving or structures from the ground upward.

"Orchards" means the establishment, care and harvesting of over twenty-five (25) fruit bearing trees such as persimmon, guava, banana or papaya for the purpose of selling the fruit to others.

"Organized Recreation Camps" means land or premises containing structures designed to be used for organized camping. The structures include bunk houses, tent platforms, mess halls and cooking facilities, and playfields. Examples include Boy Scout Camps and summer camps.

"Outdoor-Amusement, Commercial" means land or premises designed to be used by members of the public, for a fee, that contain outdoor amusement facilities such as miniature golf courses, merry-go-rounds, car race tracks, and outdoor motion picture theaters.

"Outdoor Recreation" means uses and facilities pertaining primarily to recreation activities that are carried on primarily outside of structures.

"Outdoor Recreation Concession" means uses and facilities ancillary to outdoor recreation uses, such as gasoline pumps at piers and marinas, and boat rental and food and beverage facilities at public beaches.

"Owner" means the holders of at least seventy-five percent (75%) of the equitable and legal title of a lot.

"Parcel" means an area of contiguous land owned by a person.

"Parking Area, Public" means an open area, other than street or alley, used for the parking of automobiles and available for public use whether free, for compensation, or as an accommodation for clients or customers.

"Parking Space, Automobile" means an area other than a street or alley reserved for the parking of one (1) automobile. The space shall be afforded adequate ingress and egress.

"Pet Keeping" means the feeding or sheltering of more than two (2) animals or four (4) birds as a service to others.

"Pet Raising" means the breeding, feeding or sheltering of more than two (2) animals not normally used for human consumption for the purpose of sale to others.

"Piggery" means any parcel where ten (10) or more weaned hogs are maintained.

"Planning Commission" means the Planning Commission of the County of Kauai.

"Planning Director" means the Director of the Planning Department of the County of Kauai.

"Poultry Raising" means the breeding, feeding, sheltering or gathering of more than four (4) game or domestic fowl for the purpose of sale, food or egg production, or pets.

"Private Recreation Areas" means lands or premises designed to be used exclusively by owners and renters of dwelling units, that contain such facilities as tennis courts, playfields, swimming pools, clubhouses, bathing beaches, and piers.

"Project; Project Instrument". "Project" means property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations. "Project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project.

"Property Line" means any property line bounding a lot as defined in this Section.

"Property Line, Front" means the line separating the lot from the street or other public areas. In case a lot abuts on more than one (1) street, the lot owner may elect any street lot line as the front line provided that the choice, in the discretion of the Planning Director, will not be injurious to adjacent properties and will comply with any other reasonable determination of the Planning Director. Where a lot does not abut on a street or where access is by means of an access way, the lot line nearest to and most nearly parallel to the street line is the front lot line. In cases where this definition is not applicable, the Planning Director shall designate the front lot line.

"Property Line, Rear" means that line of a lot which is opposite and most distant from the front line of the lot. In cases where this definition is not applicable the Planning Director shall designate the rear lot line.

"Property Line, Side" means any lot boundary not a front or rear lot line.

"Public Facility" means a facility owned or controlled by a governmental agency.

"Public Utility" has the meaning defined in Section 269-1, H.R.S.

"Rear, Building" means the side of the building or structure opposite the front. In cases where this definition is not applicable, the Planning Director shall make the determination.

"Recreation Vehicle Park" means a parcel of land under one (1) ownership which has been planned and improved and which is let or rented or used for the temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential use.

"Recreational Trailer" means a portable structure, used or designed for human habitation or occupancy and built on a chassis with wheels, which is capable of being licensed as a motor vehicle, a vehicle or a trailer pursuant to Hawaii Revised Statutes Chapter 249 and transported on a highway, but which is unable, due to its size, design, construction or other attributes, to comply with the minimum standards and requirements applicable to dwellings or buildings, or portions thereof, contained in Section 12-4.4 of Chapter 12, Building Code.

"Religious Facilities" means buildings, other structures, and land designed to be used for purposes of worship.

"Repair" (as applied to Structures) means the renewal or treatment of any part of an existing structure for the purpose of its maintenance. The word "repairs" shall not apply to any change of construction such as alterations of floors, roofs, walls or the supporting structure of a building or the rearrangement of any of its component parts.

"Residential Care Home" means any care home facility occupied by more than five (5) care home residents.

"Resource Management" means uses and facilities pertaining to forest products, minerals and other natural resources.

"Retail Stores or Shops" means an establishment primarily engaged in selling goods, wares or merchandise directly to the ultimate consumer.

"School" means an institution with an organized curriculum offering instruction to children in the grade range kindergarten through twelve (12), or any portion thereof.

"Setback Line" means a line parallel to any property line and at a distance from there equal to the required

minimum dimension from that property line, and extending the full length of the property line.

"Slope" means a natural or artificial incline, as a hillside or terrace. Slope is usually expressed as a ratio or percent.

"Specialized Agriculture" means the growing, collection or storing of any plant for ornamental or non-food use such as flowers and pot plants.

"Stock Raising" means the breeding, feeding, grazing, herding or sheltering of more than one (1) animal such as cattle, sheep, pigs, goats, and horses, for any purpose.

"Story" means the space in a building between the upper surface of any floor and the upper surface of the floor next above, and if there be no floor above, then the space between the upper surface of the topmost floor and the ceiling or roof above. No story shall be more than twelve (12) feet high measured from the floor level to the wall plate line.

"Street Center Line" means the center line of a street as established by official surveys or a recorded subdivision map. If not so established, the center line is midway between the right-of-way lines bounding the street.

"Street or Highway" means a way or place of whatever nature, open to the public for purposes of vehicular travel.

"Street Right-of-Way Line" means the boundary line right-of-way or easement and abutting property.

"Structural Alteration" means any change in the supporting members of a building, such as in a bearing wall, column, beam or girder, floor or ceiling joist, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components or changes in roof or exterior lines.

"Structure" means anything constructed or erected which requires location on the ground or which is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility.

"Subdivider" means a person commencing proceedings to effect a division of land for himself or for another.

"Subdivision" means the division of land or the consolidation and resubdivision into two (2) or more lots or parcels for the purpose of transfer, sale, lease, or building development, and when appropriate to the context shall relate to the process of dividing land for any purpose. The term also includes a building or group of buildings, other than hotel, containing or divided into two (2) or more dwelling units or lodging units.

"Thoroughfare" means a highway or street.

"Time Share Plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty (60) day period in any year, for any occupant. The term "time share plan" shall include both time share ownership plans and time share use plans, as follows:

(A) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed, or other means whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.

(B) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an owner- ship interest.

"Time Share Unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.

"Trailer Home" means factory built housing which is capable of being licensed as a vehicle or trailer pursuant to Hawaii Revised Statutes Chapter 249 and transported upon a highway.

"Transient Vacation Rentals" means rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.

"Undeveloped Campground" means land or premises designed to be used for temporary occupancy by campers traveling by foot or horse which may contain facilities and fireplaces, but do not contain facilities as are provided at developed campgrounds.

"Use" means the purpose for which land or building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

"Used" includes "designed, intended or arranged to be used".

"Use, Existing" means a lawful use of land existing on August 17, 1972.

"Use Permit" means a permit issued under the definite procedure provided in this Chapter allowing a certain use which is conditionally permitted for the particular district.

"Utility Facility" means a use or structure used directly in distribution or transmission of utility services.

"Utility Line" means the conduit, wire or pipe employed to conduct water, gas, electricity or other commodity from the source tank or facility for reduction of pressure or voltage or any other installation, employed to facilitate distribution.

"Wall" means any structure or device forming a physical barrier, which is so constructed that fifty percent (50%) or more of the vertical surface is closed and prevents or tends to prevent the passage of light, air and vision through the surface in a horizontal plane. (This includes structures of concrete, concrete block, wood or other materials that are solids and are so assembled as to form a solid barrier, provided carport posts, columns and other similar structures not constructed of fifty percent (50%) or more of the vertical surface shall be deemed walls.) (Ord. No. 164, August 17, 1972; Ord. No. 271, December 22, 1975; Sec. 8-1.5, R.C.O. 1976; Ord. No. 295, November 10, 1976; Ord. No. 317, June 27, 1977; Sec. 8-1.5, 1978 Cumulative Supplement; Ord. No. 389, July 28, 1980; Ord. No. 416, October 28, 1981; Ord. No. 436, September 22, 1982; Ord. No. 466, September 13, 1984; Ord. No. 484, February 18, 1986; Ord. No. 496, December 24, 1986; Ord. No. 500, March 31, 1987; Ord. No. 609, October 29, 1992; Ord. No. 790, August 26, 2002)

ARTICLE 2. DESIGNATION OF DISTRICTS, METHOD AND EFFECT OF ESTABLISHMENT OF DISTRICTS, AND ZONING MAPS

Sec. 8-2.1 Districts.

To carry out the purposes of this Chapter, the major and minor districts into which the County of Kauai may be divided and their official abbreviated designations are as follows:

(1) Residential--R:
  (A) R-1
  (B) R-2
  (C) R-4
  (D) R-6
  (E) R-10
  (F) R-20
(2) Resort--RR:
  (A) RR-10
  (B) RR-20

(3) Commercial--C:
  (A) Neighborhood Commercial--CN
  (B) General Commercial--CG
(4) Industrial--I:
  (A) Limited Industrial--IL
  (B) General Industrial--IG
(5) Agriculture--A
(6) Open--O
(7) Special Treatment--ST
  (A) Public Facilities--ST-P
  (B) Cultural/Historic--ST-C
  (C) Scenic/Ecological--ST-R
(8) Constraint--S:
  (A) Drainage--S-DR
  (B) Flood--S-FL
  (C) Shore--S-SH
  (D) Slope--S-SL
  (E) Soils--S-SO
  (F) Tsunami--S-TS

(Ord. No. 164, August 17, 1972; Sec. 8-2.1, R.C.O. 1976)

Sec. 8-2.2 Method And Effect Of Establishment Of Districts. (a) Any of the districts listed in Sec. 8-2.1 of this Chapter is or may be established for any portion of the County in map forms as provided in this Section.

(b) Sec. 8-2.3 shall constitute the "Zoning Maps" of the County of Kauai, an up-to-date copy of which shall be kept for public display in the office of the Planning Department.

(c) "Zoning Maps" and all notations, reference, data and other information defined and shown thereon shall be adopted as a part of this Chapter. Any change in the boundary of any district shall be by ordinance and shall constitute an amendment to the "Zoning Maps" and also an amendment to this Zoning Ordinance. As a part of any ordinance enacted by the County Council effecting a change in the zoning classification of any real property or boundary of any district within the County, there may be imposed conditions concerning the use or zoning classification of the real property involved.

(1) Conditions may be imposed at the discretion of the County Council for the purpose of preventing circumstances which may be adverse to public health, safety and welfare, to ensure, encourage or enhance the fulfillment of a public need involving public service, industrial or commercial needs or to preserve the heritage, character and beauty of the Island of Kauai, to assure substantial compliance with representations made by the petitioner in seeking the district boundary amendment.

(2) Conditions may include but shall not be limited to specifications of or limitation on any use, construction, landscaping or development of real property, and may contain provisions for submission and approval of plans, drawings, specifications, agreements and other documents to County Agencies and inspection by County Agencies as may be deemed necessary or desirable by the cognizant County Agencies.

(3) Conditions may be in the form of a condition precedent or a condition subsequent as the terms are used in common law and may provide that the zoning classification of the real property shall automatically change upon the occurrence of the specified condition.

(4) Conditions may contain specifications of time limitations or may be continuing.

(5) The Council may require the petitioner for district boundary amendment to submit a development schedule providing for the completion of development within a reasonable time period; to demonstrate financial, organizational and legal capacity to undertake the development that is proposed; and to offer written assurances of compliance with any representations made by the petitioner as part of the application and any specific conditions attached to approval of the application.

(6) The Council may require petitioners to submit periodic reports indicating what progress has been made in complying with any conditions that have been imposed by the Council under the provisions of this Section.

(7) If affordable housing conditions are included in an existing or future ordinance or if such ordinance is silent, no other affordable housing conditions shall be imposed on or agreed to by the petitioner or buyers, unless required by the State Land use Commission, ordinance, or Planning Commission condition approved by the Council.

(d) Upon adoption of any district as a part of the "Zoning Map", the land thus defined shall become subject to the specific regulations for all of the districts in which it is located and to the provisions of this Chapter and except as otherwise provided:

(1) No building, structure or portion thereof shall be erected, or altered, nor shall any structure, land or premises be used except in the manner indicated and only for the uses permitted in the districts in which the building, structure, land or premises is located.

(2) No building, structure or portion thereof shall be established, erected, or altered to exceed the height limits and densities, or to encroach upon minimum setbacks and designated open spaces, or to exceed the land coverage limitations, as designated in this Chapter for the districts in which the structure is located.

(3) Every use of land shall at all times be located on a parcel of land having not less than the minimum area as designated for the districts in which the use is located.

(4) No building, structure, or portion thereof, and no use, activity or development subject to regulation under this Chapter shall be undertaken or established except in accordance with the provisions of this Chapter and without first obtaining the permits required by this Chapter.

(e) Where uncertainty exists as to the boundaries of any of the aforesaid districts as shown on the "Zoning Map", the following rules shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow the centerlines.

(2) Boundaries indicated as approximately following plotted lot lines shall be construed as following the lot lines.

(3) Boundaries indicated as approximately following jurisdictional lines shall be construed as following the limits.

(4) Boundaries indicated as following shore lines shall be construed to follow the shoreline as defined in Section 205-31, H.R.S.; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerlines.

(5) The intent of the boundaries on the Zoning Maps is to differentiate relative uses or characteristics and is not intended to be a precise graphic definition. Where physical or cultural features existing on the ground vary from those shown on the "Zoning Map", or in other circumstances not covered by Subsections (a) through (d), the Planning Director shall determine the location of the boundaries. (Ord. No. 164, August 17, 1972; Ord. No. 213, May 15, 1974; Sec. 8-2.2, R.C.O. 1976; Ord. No. 346, April 3, 1978; Sec. 8-2.2, 1978 Cumulative Supplement; Ord. No. 614, November 27, 1992)

Sec. 8-2.3 Zoning Maps.

(a) In order to carry out the purpose of this Chapter, the following maps are created and designated as Sections of the Zoning Maps of the County of Kauai, current copies of which shall be kept for public display in the office of the Planning Department:

(1) Waimea Planning Area:

ZM-100	1" - 1000'
ZM-K100 (Kekaha)	1" - 400'
ZM-W100 (Waimea)	1" - 400'

(2)	Hanapepe Planning Area:	
	ZM-200	1" - 1000'
	ZM-H200 (Hanapepe)	1" - 400'
(3)	Koloa-Poipu Planning Area:	
	ZM-300	1" - 1000'
	ZM-KL300 (Kalaheo)	1" - 400'
	ZM-LW300 (Lawai)	1" - 400'
	ZM-KO300 (Koloa)	1" - 400'
	ZM-KU300 (Kukuiula)	1" - 400'
	ZM-PO300 (Poipu)	1" - 400'
	ZM-OM300 (Omao)	1" - 400'
(4)	Lihue-Kapaa Planning Area:	
	ZM-500	1" - 1000'
	ZM-WH500 (Wailua Homesteads)	1" - 400'
	ZM-WA500 (Wailua)	1" - 400'
	ZM-WP500 (Wailua - Waipouli)	1" - 400'
	ZM-KP500 (Kapaa - Kealia)	1" - 400'
	ZM-KH500 (Kapaa Homesteads)	1" - 400'
	ZM-NW400 (Nawiliwili)	1" - 400'
	ZM-LI400 (Lihue)	1" - 400'
	ZM-HM400 (Hanamaulu)	1" - 400'
	ZM-P400 (Puhi)	1" - 400'
(5)	Kilauea Planning Area:	
	ZM-600	1" - 1000'
	ZM-AN600 (Anahola)	1" - 400'
	ZM-KI600 (Kilauea)	1" - 400'
(6)	Hanalei Planning Area:	
	ZM-700	1" - 1000'
	ZM-HA700 (Hanalei Town)	1" - 200'
	ZM-PR700 (Princeville)	1" - 400'

(b) Maps indicating Constraint Districts for each of the six (6) planning areas will be at the same scale as the maps at a scale of one inch (1") equals one thousand feet (1000'). Current copies of all maps shall be kept in the office of the Planning Department. Other maps and development plans may be adopted to accommodate special requirements of a particular area. (Ord. No. 164, August 17, 1972; Sec. 8-2.3, R.C.O. 1976; Ord. No. 770, June 19, 2001)

ARTICLE 3. RESIDENTIAL DISTRICTS (R)

Sec. 8-3.1 Purpose.

(a) To establish standards governing the development, construction and use of housing and dwelling facilities.

(b) To provide opportunity for all groups of persons to obtain adequate housing within each area of the County suitable for residential use in relation to other land uses and consistent with the preservation of natural, scenic, and historic resources.

(c) To establish the level of minimum services necessary to assure the adequacy of housing.

(d) To encourage a variety of housing types, sizes and densities necessary to meet the needs of all economic groups and to avoid environmental monotony detrimental to the quality of life. (Ord. No. 164, August 17, 1972; Sec. 8-3.1, R.C.O. 1976)

Sec. 8-3.2 Types Of Residential Districts.

(a) There are six (6) residential density districts as follows:

(1) R-1
(2) R-2
(3) R-4
(4) R-6
(5) R-10
(6) R-20

(b) The number portion of each residential density district establishes the maximum number of dwelling units that may be permitted per acre of land in each district as calculated in accordance with Sec. 8-3.8. (Ord. No. 164, August 17, 1972; Sec. 8-3.2, R.C.O. 1976)

Sec. 8-3.3 Generally Permitted Residential Uses And Structures.

(a) The following types of residential uses and structures are permitted in districts R-1, R-2, R-4, and R-6 so long as the dwelling unit limitations established in Sec. 8-3.2 are not exceeded:

(1) Single family dètached dwellings;

(2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger;

(3) Two (2) multiple family dwelling units or two (2) single family attached dwelling units upon a parcel of record as of June 30, 1980; and

(4) Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program.

(b) Multiple family and single family attached dwellings are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above.

(c) Public and private parks and home businesses are permitted in all districts.

(d) Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located. (Ord. No. 164, August 17,

1972; Sec. 8-3.3, R.C.O. 1976; Ord. No. 388, June 30, 1980; Ord. No. 430, August 17, 1982; Ord. No. 466, September 13, 1984; Ord. No. 551, March 8, 1989)

Sec. 8-3.4 Uses And Structures In Residential Districts That Require A Use Permit.

The following uses and structures in residential districts require a use permit:

(1) Botanical and zoological gardens.
(2) Cemeteries, mortuaries and crematoriums.
(3) Churches, temples, and monasteries.
(4) Clubs, lodges and community centers.
(5) Diversified and specialized agriculture and nurseries.
(6) Dormitories, guest and boarding houses; but not hotels and motels.
(7) Golf courses.
(8) Medical and nursing facilities.
(9) Museums, libraries and public services and facilities.
(10) Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles.
(11) Project developments in accordance with Article 18 of this Chapter.
(12) Retail shops and stores.
(13) School and day-care centers.
(14) Transportation terminals and docks.
(15) Three (3) or more multiple family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District.
(16) Three (3) or more single family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District.
(17) Residential care homes.
(18) Adult Family Group Living Home.
(19) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District. (Ord. No. 164, August 17, 1972; Sec. 8-3.4, R.C.O. 1976; Ord. No. 388, June 30, 1980; Ord. No. 466, September 13, 1984)

Sec. 8-3.5 Development Standards For Residential Structures Not Involving The Subdivison Of Land.

(a) Parcel Area. Parcel area shall be as follows:

(1) The parcel area required for single family detached dwelling units shall be calculated in

accordance with the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-3.2, except that, one (1) single family detached dwelling unit may be constructed on any legal lot or parcel of record as of August 17, 1972, even if the lot or parcel is smaller than is required in the density district in which the lot or parcel is located.

(2) Subject to the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-3.2, the minimum parcel area on which two (2) or more attached single family dwellings may be developed shall be twelve thousand (12,000) square feet.

(3) Subject to the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-3.2, the minimum parcel area on which two (2) or more multiple family dwelling units may be developed shall be ten thousand (10,000) square feet.

(b) Setback Requirements. Setback requirements shall be as follows:

(1) No building may be closer than ten (10) feet to the right-of-way line of a public thoroughfare or the property line of a private street or the pavement line of a driveway or parking lot serving more than three (3) dwelling units.

(2) No garage, carport or storage building may be closer than ten (10) feet to the right-of-way line of a public thoroughfare.

(3) No building shall be closer to a side property line than five (5) feet or one-half (1/2) the total height of the highest building wall from the ground level nearest the property line, whichever is greater.

(4) No eave, roof overhang, or other appurtenance to a building, other than a fence under six (6) feet in height, shall project into any setback more than one-half (1/2) the distance of the setback, or four (4) feet, whichever is less.

(5) No balconies, overhead walkways, decks, carports or other exterior spaces intended for human occupancy above the ground floor of any building, shall penetrate the setback area.

(6) No building shall be closer than ten (10) feet to the rear property line. Accessory buildings and garden or service shelters not higher than seven (7) feet nor covering more than four hundred (400) square feet, nor exceeding twenty percent (20%) of the rear property line in the longest dimension facing the rear property line, may be built without setback. Accessory buildings higher than seven (7) feet shall

not be set back less than five (5) feet from the rear property line or one-half (1/2) the total height of the building wall nearest the property line measured from the ground level to the wall plate line, whichever is greater.

(7) The front side of any building shall not be closer than ten (10) feet from any property line, and the rear side of any building shall not be closer than fifteen (15) feet from any property line.

(8) Greater setbacks because of topographic, drainage, sun exposure or privacy conditions may be required and made a condition for a zoning permit.

(c) Minimum Distance Between Buildings. Minimum distance between buildings shall be as follows:

(1) Minimum distance between detached buildings containing dwelling units shall be:

End to end or side to side or end to side	10 feet
Front to end or side	20 feet
Front to front	20 feet
Front to rear	25 feet
Rear to rear	30 feet
Rear to end or side	20 feet

All dimensions shall be increased five (5) feet for each story over one (1) in both buildings.

(2) The minimum distance between detached accessory buildings and between dwelling unit buildings and detached accessory buildings shall be ten (10) feet.

(d) Parcel Dimension Requirements. Parcel dimension requirements shall be as follows:

(1) A parcel large enough to qualify for two (2) or more dwelling units shall conform to the following requirements before any person is permitted to develop more than one (1) single family dwelling unit and accessory buildings on the parcel:

(A) The minimum frontage on a public or private street shall be twenty-five (25) feet unless the parcel is a flag lot.

(B) The minimum average width of the existing parcel, excluding the flag portion of a flag lot, shall be sixty (60) feet.

(2) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-3.7.

(3) The amount of land coverage created including buildings and pavement, shall not exceed fifty per cent (50%) of the lot or parcel area.

(e) Open Space. When development on a parcel meeting the density and parcel area requirements of Sec. 8-3.5

results in the designation of areas within the parcel for open space use, the area shall be designated on a map of the parcel as permanent open space and the map shall be recorded with the Bureau of Land Conveyances. In addition, the areas shall automatically be transferred to the Open District for zoning purposes. (Ord. No. 164, August 17, 1972; Sec. 8-3.5, R.C.O. 1976; Sec. 8-3.5, 1978 Cumulative Supplement; Ord. No. 486, April 29, 1986)

Sec. 8-3.6 Development Standards For Residential Structures Which Involve The Subdivision Of Land.

(a) Single Family Detached Dwellings. Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-3.2, the following criteria shall apply where an applicant seeks subdivision approval to create lots for single family detached dwellings:

(1) Lot Area

(A) The minimum average lot area shall be six thousand (6,000) square feet;

(B) No lot shall be less than four thousand five hundred (4,500) square feet; and

(C) No more than twenty per cent (20%) of the lots in the proposed subdivision shall be less than six thousand (6,000) square feet.

(2) Lot Width

(A) Minimum average lot width shall be sixty (60) feet;

(B) No lot shall be less than forty-five (45) feet in width;

(C) No more than twenty per cent (20%) of the lots in the proposed subdivision shall be less than sixty (60) feet in width;

(D) No more than six (6) lots less than sixty (60) feet in width shall be located adjacent to one another;

(E) The pole section of a flag lot shall not be less than fifteen (15) feet in width.

(3) Lot Length

(A) The average length of any lot shall not be greater than three (3) times the average width;

(B) The maximum length of the pole portion of a flag lot shall be one hundred fifty (150) feet.

(4) Setback. The minimum distances from property lines shall be as required by Sec. 8-3.5(b), except that the applicant may indicate varying front setbacks on the subdivision map so long as no front setback is less than ten (10) feet.

(5) Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-3.2, where an applicant seeks approval of a horizontal property regime, all single family detached dwelling units shall be located in a manner as to conform to the requirements of this

Article as if they were to occur on separate subdivided parcels or lots.

Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-3.7.

(b) Single Family Attached Dwellings. Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-3.2, the following standards shall apply where an applicant seeks subdivision approval to create lots for single family attached dwellings:

(1) Lot Area

(A) The minimum average lot area shall be three thousand (3,000) square feet;

(B) No lot shall be less than two thousand four hundred (2,400) square feet;

(C) No more than forty per cent (40%) of the lots in the proposed subdivision shall be less than three thousand (3,000) square feet;

(D) There shall be a permanent open space in common ownership and readily accessible to each single family attached lot usable for recreation and community activities other than streets, driveways, and parking, equal to no less than thirty per cent (30%) of the total area of all single family attached lots.

(2) Lot Width

(A) The minimum average lot width shall be thirty (30) feet;

(B) No lot shall be less than twenty-four (24) feet in width;

(C) No more than forty per cent (40%) of the lots in the proposed subdivision shall be less than thirty (30) feet in width;

(D) No more than six (6) lots less than thirty (30) feet in width shall be located adjacent to one another.

(3) Lot Length. The average length of any lot shall not exceed four (4) times its average width.

(4) Setbacks

(A) Minimum front setbacks shall be the same as required by Sec. 8-3.5(b).

(B) Minimum sideyard setback shall be the same as required by Sec. 8-3.5(b), except that the minimum setback from property lines between single family attached dwellings within the same subdivision shall be either less than six (6) inches or greater than five (5) feet;

(C) Minimum rear setbacks shall be fifteen (15) feet unless a maintenance easement is

required in which case minimum rear setbacks shall be twenty-five (25) feet.

(5) Maintenance Easements. Easements shall be provided for maintenance access to the rear or exposed sides of all single family attached lots which do not have exterior access. Side access easements shall be not less than five (5) feet and rear access easements shall be not less than ten (10) feet.

(6) Distance Between Buildings.

(A) When the parallel walls of two (2) or more single family attached units are not over one (1) foot apart, they shall be considered as one (1) building in determining the minimum distance between buildings;

(B) The minimum distance between buildings shall be the same as required by Sec. 8-3.5(c), except that the minimum side to side distances between any portion of adjacent buildings must be five (5) feet or greater if the side to side distance is more than one (1) foot; and no more than six (6) attached single family dwellings may be placed adjacent to one another where all dwellings are within twenty (20) feet of one another;

(C) Minimum distances between single family attached dwellings and single family detached or multiple family dwellings shall be as required by Sec. 8-3.5(c).

(7) Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-3.2, where an applicant seeks approval of a horizontal property regime, all single family attached dwelling units shall be located in a manner as to conform to the requirements of this Section as if they were to occur on separate subdivision parcels or lots.

(8) Construction Requirements. No lots for single family attached dwellings, as provided in this Section, shall be sold or leased until the dwelling units and other improvements to be erected on the lots, as indicated on construction plans or which were required as a condition of a zoning permit, have undergone at least fifty per cent (50%) construction or completion and that the developer has deposited or provided the County of Kauai with a one hundred per cent (100%) Bond from the inception to the completion of the project.

(9) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential developments as established in Sec. 8-3.7.

(c) Multiple Family Dwellings. Subject to the acreage limitations in the particular residential density district, as provided in Sec. 8-3.2, the following standards shall apply where an applicant seeks subdivision approval to create lots for multiple family dwellings:

(1) Lot Area: The minimum lot area shall be ten thousand (10,000) square feet.

(2) Lot Width: The minimum lot width shall be eighty (80) feet.

(3) Lot Length: The average length of any lot shall not exceed three (3) times its average width.

(4) Setbacks: Minimum setbacks shall be as required by Sec. 8-3.5(b).

(5) Distance Between Buildings: Minimum distance between buildings shall be as required by Sec. 8- 3.5(c).

(6) Maximum Lot Coverage: The amount of land coverage created, including buildings and pavement, shall not exceed fifty per cent (50%) of the lot or parcel area. This requirement shall not apply to separate lots or parcels used in common for parking or other community uses.

(7) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-3.7. (Ord. No. 164, August 17, 1972; Sec. 8-3.6, R.C.O. 1976)

Sec. 8-3.7 Standards Of Development Applicable To All Residential Development.

(a) Access, Driveways and Off-Street Parking. The following standards of development shall apply to all residential development:

(1) No residential building may be constructed on a parcel that is in excess of six hundred (600) feet of traveling distance from a public thoroughfare, or is in excess of three hundred (300) feet of traveling distance from vehicular access adequate for fire protection vehicles, refuse collection vehicles, moving vans, or other standard service vehicles.

(2) No common driveway may serve more than four (4) single family lots or dwelling units or be in excess of one hundred twenty (120) feet long.

(3) The right-of-way width and improvements of private streets shall be equivalent to County standards for public streets.

(4) A minimum of two (2) off-street parking spaces per dwelling unit shall be provided. When off-street parking spaces serving more than one (1) dwelling unit are provided in a parking area, the spaces shall be paved. For elderly housing projects, the minimum off-street parking spaces may be one (1) per three (3) dwelling units. For multiple family dwelling units used primarily by visitors, tourists and transient guests, a minimum off-street parking space ratio of 1.5 spaces per dwelling unit may be permitted by the Planning Director.

(5) No driveway shall be wider than forty per cent (40%) of the lot frontage on a public thoroughfare, except on the turn-around end of a cul-de-sac.

(6) Driveway connections to public streets shall conform to standards of design and construction established by the Department of Public Works.

(7) All parking areas serving more than two (2) dwelling units shall be screened from public thoroughfares by a fence, wall or planting not less than four (4) feet in height, provided that the screening height shall be lowered to the standard as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations.

(8) All paved parking areas shall be set back from public right-of-way lines a minimum of five (5) feet.

(b) Building Height.

(1) No single family detached or single family attached dwelling, or accessory structure shall be more than two (2) stories above and one (1) story below from the finished grade at the main entry, over twenty (20) feet measured from the finished grade at the main entry to the highest exterior wall plate line, and over thirty (30) feet to the highest point of the roof measured at each point along the building from the finished grade at the main entry. The finished grade at the main entry shall not be elevated more than a maximum of four (4) feet from the existing grade. (See Figure 1)

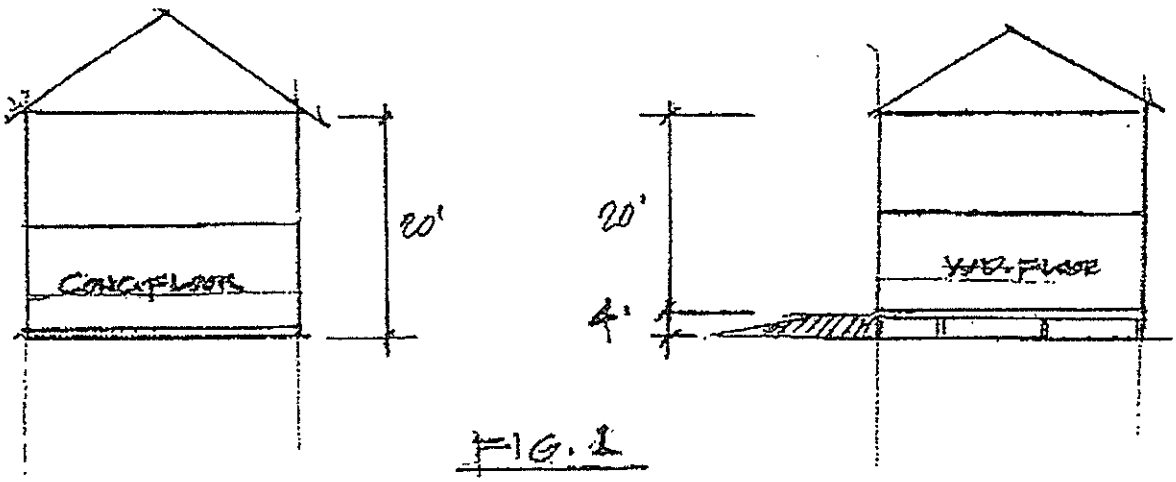

FIG. 1

For the purpose of determining the number of stories in a single family detached dwelling, a loft shall be considered a story, except when the dwelling is constructed in a flood plain area. In a flood plain area a loft shall not be deemed a story for the story limitation purpose of Sec. 8-3.7(b)(1). Lower minimums may be imposed as a condition to a zoning permit to recognize topographic, light and air, privacy or architectural conditions of adjacent development or uses.

2) No multiple family buildings, hotel or motel, shall be more than ten (10) feet higher than any residential building located within thirty (30) feet of the building, or shall not exceed four (4) stories nor exceed forty (40) feet from finished grade at each point along the building to the highest wall plate line. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less. The limits contained in this Section shall not apply to spaces containing mechanical equipment, such as elevator machinery and air conditioning units, but the spaces shall not exceed fifteen (15) feet above the highest wall plate line.

(c) Utilities and Services. The following standards of development shall apply to all residential development:

(1) Waste collection areas shall be provided for single family detached dwelling and common waste collection areas shall be provided for single family attached and multiple family dwelling units, according to standards established by the County Engineer. All waste collection areas shall be screened by a fence, wall or hedge from public thoroughfares when serving over two (2) dwelling units.

(2) Where a zoning permit is issued providing for development at a density of ten (10) or more dwelling units per acre on a parcel, all electric distribution lines, telephone lines, gas distribution lines, cable television lines, and like facilities located within the parcel to be developed or leading into the parcel shall be installed underground unless the applicant demonstrates, and the Planning Commission determines on the basis of substantial evidence, that installation of any of the foregoing lines and facilities above ground will better protect scenic and environmental values.

The following types of lines and facilities may be exempted from the requirements of this Section:

(A) Poles without overhead lines used exclusively for fire or police alarm boxes, lighting purposes or traffic control;

(B) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building;

(C) Equipment appurtenant to underground facilities, such as surface mounted transformers, pedestal mounted terminal boxes, and meter cabinets and concealed ducts, provided that the facilities shall be located and designed so as to harmonize with the area, and shall be appropriately screened and landscaped. In appropriate instances, all or part of the transformers and service terminals shall be flush with or below the surface of the ground at the point of installation.

(3) All residential development accessible to a public sewer shall provide for adequate sanitary sewer

facilities in accordance with standards established by the Department of Public Works and the State Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(4) All residential development in districts permitting densities in excess of one (1) dwelling unit per acre shall be served by a public water distribution system or a private system equivalent to public standards and specifications as established by the Department of Water.

(d) Public Access. The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-3.7, R.C.O. 1976; Ord. No. 374, November 27, 1979; Ord. No. 389, July 28, 1980; Ord. No. 790, August 26, 2002)

Sec. 8-3.8 Application Of Density And Development Standards.

(a) Calculation of Permissible Densities. The area in connection with which the permissible number of dwelling units shall be calculated shall consist of all that land owned or controlled by the applicant designated in the permit application as part of the land development for which the permit is sought. A separate calculation shall be made for the lands in areas that are contained in different residential density districts where the application is made for more than two (2) dwelling units and the land area designated in the permit application comes within more than one (1) residential district. The number of permissible dwelling units shall include dwelling units previously authorized, or constructed, within the area so designated in the application.

(b) Calculation of Lot or Parcel Area. For purposes of determining whether minimum parcel area requirements are satisfied, lots and parcels shall not include adjoining streets or commonly-held or used areas, such as dedicated open space, parking lots, or like facilities.

(c) Open Space. When a subdivision meeting the density and parcel area requirements of Sec. 8-3.6, results in the designation of areas within the subdivision for open space use, the areas shall be designated on the final subdivision map as permanent open space, and in that case, upon approval of the final subdivision map the areas shall automatically be transferred to Open District for zoning purposes.

(d) Plot Plans Where Subdivision Approval Not Sought. Where a permit is sought for residential development containing fewer dwelling units than are permissible on the lot or parcel in the residential density district in which the lot or parcel is located, and no subdivision approval is

sought, the applicant shall submit a plot plan which shall show that the future subdivision of the lot or parcel, or that the future location of other structures on the lot or parcel, can be done in a manner that will conform to the standards established in this Chapter. The plot plan shall be filed by the Planning Department in such a manner that it will be available in the future to the Department and to any subsequent purchaser from the applicant to determine the future permissible development on the lot or parcel.

The developer may deviate from the plot plan filed with the Planning Commission provided the deviation will be an improvement over the original plan submitted.

(e) Parcels Containing Existing Development. No parcel shall be created subsequent to the effective date of this Ordinance which is occupied by existing dwelling units unless the parcel created is large enough to meet the density and acreage requirements for the existing dwelling units in the density district in which it is located.

(f) Fractional Units. When the density calculation results in a fractional unit of sixty-five percent (65%) or more of a unit, the allowable density may be established at the next higher number of units. (Ord. No. 164, August 17, 1972; Sec. 8-3.8, R.C.O. 1976)

Sec. 8-3.9 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any residential district except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

(a) Class I Permit. A Class I Permit must be obtained for construction or development on an existing parcel where:

(1) the parcel is not located in a Constraint District or a Special Treatment District, and is not large enough to qualify for more than one (1) dwelling unit under the density permitted in the Residential District in which the parcel is located; and

(2) the construction or development does not require a use permit or a variance permit.

(b) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel that is not located in a Constraint District or Special Treatment District, where the construction or development does not require a use permit or a variance permit and:

(1) consists of two (2) to ten (10) dwelling units, provided that where the construction or development is to be carried out on a parcel large enough to qualify for eleven (11) or more dwelling units, the Planning Director may require a Class III or Class IV Zoning Permit if he determines that additional construction or development on the parcel in

excess of ten (10) dwelling units is probable in the near future; or

(2) consists of one (1) dwelling unit on a parcel large enough to qualify for more than one (1) dwelling unit.

(c) Class III Permit. A Class III Permit must be obtained for construction or development that does not require a variance permit and:

(1) consists of eleven (11) to fifty (50) dwelling units; provided that where the construction or development is to be carried out on a parcel large enough to qualify for fifty-one (51) or more dwelling units, the Planning Director may require a Class IV Zoning Permit if he determines that additional construction or development on the parcel in excess of fifty (50) dwelling units is probable in the near future; or

(2) consists of construction or development for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(d) Class IV Permit. A Class IV Permit shall be obtained for construction or development consisting of fifty-one (51) or more units or for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(e) To obtain any Permit the applicant shall show compliance with the Standards established in this Section and shall submit, where necessary, a plot plan as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-3.9, R.C.O. 1976)

Sec. 8-3.10 Application To Residential Development In Other Districts.

All residential construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article. (Ord. No. 164, August 7, 1972; Sec. 8-3.10, R.C.O. 1976)

Sec. 8-3.11 Development Of Other Uses In A Residential District.

All permitted uses, all uses requiring a use permit, and all uses allowed by variance other than residential:

(a) Shall conform to development standards established for the district in which they are normally permitted provided that:

(1) the minimum distance from property lines shall be the same as that required for Single Family Detached Dwellings; and

(2) the maximum building heights shall be the same as that required for Single Family Detached Dwellings; or

(b) Shall conform to the requirements and conditions imposed by the Planning Commission in granting the use permit or variance permit. (Ord. No. 164, August 17, 1972; Sec. 8-3.11, R.C.O. 1976)

ARTICLE 4. RESORT DISTRICTS (RR)

Sec. 8-4.1 Purpose.

(a) To create and protect attractive areas in pleasing and harmonious surroundings to accommodate the needs and desires primarily of visitors, tourists and transient guests.

(b) To control density and to assure that undue congestion of streets and facilities will not occur.

(c) To control the organization and design of use and structures to assure that the development will not detract from the natural features and attributes of the surrounding area.

(d) To insure that physical and visual public access to recreational, historic and scenic areas is maintained and improved. (Ord. No. 164, August 17, 1972; Sec. 8-4.1, R.C.O. 1976)

Sec. 8-4.2 Types Of Resort Districts.

(a) There are two (2) resort density districts as follows:

(1) RR-10
(2) RR-20

(b) The number portion of each resort density district establishes the maximum number of dwelling units including hotel and motel rooms that may be permitted per acre of land in each district as calculated in accordance with Sec. 8-3.8, except that each hotel and motel room shall be considered as one-half (1/2) of one (1) dwelling unit in computing the allowable number of dwelling units. (Ord. No. 164, August 17, 1972; Sec. 8-4.2, R.C.O. 1976)

Sec. 8-4.3 Generally Permitted Resort Uses And Structures.

The following types of uses and structures are permitted in RR-10 and RR-20 Districts, so long as the dwelling unit limitations established in Sec. 8-4.2 are not exceeded and provided that each use or structure is incidental to or accessory to resort development:

(1) Accessory structures and uses
(2) Apartment hotels
(3) Automobile service and storage
(4) Barber shop and beauty shop
(5) Commercial recreation

(6) Gift shops
(7) Golf courses
(8) Home business
(9) Hotels
(10) Laundromat
(11) Libraries
(12) Motels
(13) Museums
(14) Police and fire stations
(15) Public parks and monuments
(16) Restaurants and food service
(17) Retail cleaning outlets
(18) Retail clothing shops
(19) Retail food and drug shops
(20) Shoe repair shops
(21) Single family detached dwellings

(Ord. No. 164, August 17, 1972; Sec. 8-4.3, R.C.O. 1976; Ord. No. 388, June 30, 1980)

Sec. 8-4.4 Uses And Structures In Resort Districts That Require A Use Permit.

The following uses and structures in resort districts shall require a use permit:

(1) Agriculture
(2) Automobile sales and repair
(3) Bars, night clubs and cabaret, not a part of a hotel
(4) Churches, temples and monasteries
(5) Day camps
(6) Employee or construction worker temporary housing
(7) Marinas, transportation terminals and docks
(8) Professional offices
(9) Project development in accordance with Article 18 of this Chapter
(10) Public utilities and facilities
(11) Retail manufacturing
(12) Shopping centers
(13) Theaters and auditoriums
(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District. (Ord. No. 164, August 17, 1972; Sec. 8-4.4, R.C.O. 1976)

Sec. 8-4.5 Development Standards.

(a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-4.2, the standards for the development of single family detached residential structures shall be the same as those provided in Sec. 8-3.1.

(b) Hotels. Buildings containing hotel rooms shall be considered the same as multiple family dwellings subject to

the same standards as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

(1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;

(2) only one (1) parking space must be provided for each three (3) hotel rooms;

(3) the maximum allowable land coverage shall be fifty percent (50%);

No hotel room in a structure containing more than three (3) rooms shall be converted to a dwelling unit without first obtaining a Class IV Zoning Permit.

(c) Motels. Development standards for motels shall be the same as those for multiple family dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

(1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;

(2) at least one (1) parking space shall be provided for each motel room.

(d) Other Permitted Uses. Parking service, open space and other requirements applicable to each use other than dwelling units shall be the same as the regulations established in the district other than Resort where such uses are permitted and regulated.

(e) Other Requirements. Other requirements for development standards in resort districts are as follows:

(1) The Planning Director or the Planning Commission may revise the requirements if the plan review required for a zoning permit indicates that the specific nature of the overall development reasonably warrants the revisions.

(2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-4.5, R.C.O. 1976; Ord. No. 363, April 5, 1979; Ord. No. 388, June 30, 1980; Ord. No. 396, August 11, 1980)

Sec. 8-4.6 Permits Required.

(a) No construction or other development for which standards are established in this Chapter shall be undertaken within any Resort District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

(1) Class I Permit. A Class I Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District, and is not large enough to qualify for more than one (1) dwelling unit under the density permitted in the Resort District in which the parcel is located; and

(B) the construction or development does not require a use permit or a variance permit.

(2) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District, and is large enough to qualify for two (2) to ten (10) dwelling units under the density permitted in the Resort District in which the parcel is located; and

(B) the construction or development does not require a use permit or a variance permit.

(3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel for which a variance permit is not required, where:

(A) the parcel is large enough to qualify for eleven (11) to twenty-five (25) dwelling units under the density permitted in the Resort District in which the parcel is located, whether or not the parcel is located in a Constraint District or Special Treatment District; or

(B) the construction or development consists of one (1) single family detached dwelling in which case a Class II Permit may be obtained unless the parcel is located in a Constraint District or a Special Treatment District; or

(C) the construction or development is such that a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) large enough to qualify for more than twenty-five (25) dwelling units whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit or variance permit is required; or

(B) for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(5) To obtain any permit the applicant shall show compliance with the Standards established in this Section and shall submit a plot plan and other

information as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-4.6, R.C.O. 1976)

Sec. 8-4.7 Application To Resort Development In Other Districts.

All resort construction, development or use permitted by or in accordance with this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Section. (Ord. No. 164, August 17, 1972; Sec. 8-4.7, R.C.O. 1976)

ARTICLE 5. COMMERCIAL DISTRICTS (C)

Sec. 8-5.1 Purpose.

(a) To designate areas suitable for commercial and public or private business activities distributed so as to supply goods and services to the public in a convenient and efficient manner.

(b) To relate commercial and business activities to established or projected transport, utility and community patterns so that they may contribute to the general health, safety and welfare of the public.

(c) To assure that commercial and business development and uses will not detract from the environmental qualities of the surrounding areas. (Ord. No. 164, August 17, 1972; Sec. 8-5.1, R.C.O. 1976)

Sec. 8-5.2 Types Of Commercial Districts.

(a) There are two (2) Commercial Districts:

(1) Neighborhood Commercial. The official abbreviated designation for "Neighborhood Commercial" is "CN".

(2) General Commercial. The official abbreviated designation for "General Commercial" is "CG".

(b) Neighborhood Commercial shall include uses and services which are frequently required and utilized by residents of all ages and which can be compatibly located in close proximity to residential districts.

(c) General Commercial shall include uses and services which are less frequently used and which are normally supplemented by and dependent upon the aggregate activities of a central commercial center serving several residential neighborhoods and which are less compatible with the environmental qualities of residential districts. (Ord. No. 164, August 17, 1972; Sec. 8-5.2, R.C.O. 1976)

Sec. 8-5.3 Generally Permitted Uses And Structures.

(a) Neighborhood Commercial. The following uses and structures are permitted in neighborhood commercial districts:

(1) Accessory uses and structures
(2) Automobile services
(3) Churches, temples and monasteries
(4) Clubs, lodges and community centers
(5) Household services
(6) Museums, libraries and public services
(7) Personal services, such as barber shops, laundromats, and shoe repair shops
(8) Professional offices
(9) Public parks and monuments
(10) Retail shops and stores
(11) Restaurants and food services
(12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.

(b) General Commercial. The following types of uses and structures are permitted in general commercial districts:

(1) Accessory uses and structures
(2) Automobile sales, repair and storage
(3) Automobile services
(4) Churches, temples and monasteries
(5) Clubs, lodges and community centers
(6) Commercial indoor amusement and parks
(7) Department stores
(8) Hotels and motels
(9) Household services
(10) Light manufacturing, such as handicrafts and garment fabrication
(11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
(12) Museums, libraries and public services
(13) Offices and professional buildings
(14) Parking garages
(15) Personal services
(16) Public offices and buildings
(17) Public parks and monuments
(18) Research and development
(19) Restaurants and food services
(20) Retail sales
(21) Supermarkets and shopping centers
(22) Transportation terminals and docks
(23) Warehouses
(24) Wholesale outlets

(Ord. No. 164, August 17, 1972; Sec. 8-5.3, R.C.O. 1976)

Sec. 8-5.4 Uses And Structures In Commercial Districts That Require A Use Permit.

(a) Neighborhood Commercial. The following uses and structures in neighborhood commercial districts require a use permit:

(1) Animal hospitals
(2) Automobile sales, repair and storage
(3) Botanic and zoologic gardens
(4) Communications facilities
(5) Construction materials storage
(6) Diversified agriculture
(7) Food processing and packaging
(8) Light manufacturing
(9) Multiple family dwellings and single family attached dwellings
(10) Private and public utilities and facilities
(11) Project development in accordance with Article 18 of this Chapter
(12) Research and development
(13) Schools and day care centers
(14) Warehouses
(15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

(b) General Commercial. The following uses and structures in general commercial districts require a use permit:

(1) Animal hospitals
(2) Bars
(3) Botanic and zoologic gardens
(4) Commercial outdoor amusement
(5) Communications facilities
(6) Construction materials storage
(7) Diversified agriculture
(8) Food processing and packaging
(9) Nightclubs and cabarets
(10) Private and public utilities and facilities
(11) Project development in accordance with Article 18 of this Chapter.
(12) Residential dwellings, detached, attached or multi-family
(13) Schools and day care centers
(14) Warehouses
(15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director. (Ord. No. 164, August 17, 1972; Sec. 8-5.4, R.C.O. 1976)

Sec. 8-5.5 Development Standards For Commercial Development.

(a) Lot Size. Lot size shall be as follows:

(1) The minimum lot or parcel area which may be created in a Neighborhood Commercial District shall be six thousand (6,000) square feet.

(2) The minimum lot or parcel area which may be created in a General Commercial District shall be eight thousand five hundred (8,500) square feet.

(3) Any existing legal lot or parcel of record as of the effective date of this Ordinance that is smaller than the required size may be developed for commercial use.

(4) Lot or parcel area shall be calculated in accordance with Sec. 8-3.8(b).

(b) Setback Requirements. Setback requirements shall be as follows:

(1) Minimum distances from property lines.

(A) The minimum distance of any building from the right-of-way line of a public or private street or the pavement line of a driveway or parking lot used by the public shall be five (5) feet unless the building is entered from that side by motor vehicles in which case the minimum distance shall be fifteen (15) feet.

(B) The minimum distance of any building to a side property line when the adjacent use district is commercial shall be zero. When the adjacent use district is other than commercial, the minimum distance to the property line shall be the same as that required for residential use.

(C) The minimum distance of any building to a rear property line when adjacent use district is commercial shall be zero. When the adjacent rear use district is other than commercial, the minimum distance to the rear property line shall be ten (10) feet.

(c) Minimum Distance Between Buildings. The minimum distance between detached buildings on the same parcel shall be fifteen (15) feet for each story over two (2), or one--half (1/2) the total height of the highest building, whichever is greater.

(d) Parcel Dimension Requirements. No parcel shall be created unless:

(1) It has a minimum frontage on a public street of sixty (60) feet in a Neighborhood Commercial District and one hundred (100) feet in a General Commercial District;

(2) The average depth of the parcel is not greater than four (4) times its average width; and

(3) The minimum average width is sixty (60) feet in a Neighborhood Commercial District and one hundred (100) feet in a General Commercial District.

(e) Driveways and Parking Areas. Driveways and parking areas shall be as follows:

(1) The minimum driveway width in Commercial Districts shall be twenty (20) feet if there is two-way traffic and fourteen (14) feet if there is one-way traffic.

(2) Parking areas shall conform to standards of design and construction established by the County Engineer, provided that:

(A) No parking lot pavement edge may be located closer than five (5) feet from the right--of-way line of a public street;

(B) No part of parked vehicles shall protrude into that setback;

(C) All parking lots shall be screened from public thoroughfares by a fence, wall or plant screen not less than four (4) feet high, provided that the screening height shall be lowered to the standards as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations. The setback area between the parking area paving and the public right-of-way shall be planted and shall not be paved.

(3) Off-Street Parking. The following requirements shall apply to commercial development in the Commercial District and any other district in which such uses are permitted or allowed:

(A) General retail sales and services where sales or business transactions normally involve the presence of consumers but do not establish capacity by seating: One (1) parking space for each three hundred (300) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, grocery stores, drug stores, clothing stores, gift and sundry stores, banks, personal and household services.

(B) Retail sales and services where the capacity is established by seating: One (1) parking space for each two hundred (200) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, restaurants, bars, cabarets, barber and beauty shops.

(C) Offices and office buildings: One (1) parking space for every two hundred (200) square feet of net office space and waiting rooms or other spaces used by the public for the transaction of business or services, but not less than two (2) parking spaces shall be required. This category includes, but is not limited to, general business offices, medical and dental offices.

(D) Churches, sport arenas, auditoriums, theaters, assembly halls and the like: One (1) parking space for each eight (8) seats in principal assembly room.

(E) The Planning Director shall determine the distribution of requirements for any particular use or combination of uses and may increase parking requirements when particular uses or locations occur in areas where unusual traffic congestion or conditions exist or are projected.

(F) In cases where the provision of off-street parking to meet these requirements is not feasibly consistent with the parcel size or location, the applicant may be allowed to meet these requirements at any other location within two hundred (200) feet of the parcel where the use is proposed, provided that the requisite number of parking spaces at the location are under the control of the applicant and are devoted exclusively to parking uses in connection with the commercial development for which the application is made; and provided further, that a recorded easement or other interest is created in the land at the other location that assures permanent use of the other location for parking purposes.

(f) Height Limitations. Height limitations shall be as follows:

(1) No building within a General Commercial District shall exceed fifty (50) feet in height, measured from the ground level of the primary building entrance.

(2) No building within a Neighborhood Commercial District shall exceed thirty-five (35) feet in height measured from the ground level of the primary building entrance nor shall the building contain more than two (2) stories.

(g) Lot Coverage. Lot coverage shall be as follows:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed eighty percent (80%) of the lot or parcel area within a Neighborhood Commercial District.

(2) The amount of land coverage created, including buildings and pavement, shall not exceed

ninety percent (90%) of the lot or parcel area within a General Commercial District.

(3) All uncovered areas shall be landscaped with living plant material.

(h) Waste Collection Areas. Waste collection areas shall be enclosed.

(i) Sewers. All commercial development accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with standards established by the Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(j) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-5.5, R.C.O. 1976)

Sec. 8-5.6 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Commercial District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19 shall be required for the following activities:

(1) Class I Permit. A Class I Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not larger than ten thousand (10,000) square feet; and

(B) the construction or development does not require a use permit or a variance permit.

(2) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is larger than ten thousand (10,000) square feet but smaller than twenty thousand (20,000) square feet; and

(B) the construction or development does not require a use permit or a variance permit.

(3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel where:

(A) the parcel is larger than twenty thousand (20,000) square feet but smaller than one (1) acre, whether or not the parcel is located within a Constraint District or a Special Treatment District, and the construction or development does not require a variance permit; or

(B) for construction or development on a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) one (1) acre or more, whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit or variance permit is required; or

(B) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Section and shall submit, where necessary, a plot plan as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-5.6, R.C.O. 1976)

Sec. 8-5.7 Application To Commercial Development In Other Districts.

All commercial construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article, with the following exceptions:

(1) Building heights shall conform to the Standards of the applicable Use District.

(2) Minimum Distances from property lines shall be the same as required of other development in the applicable Use District. (Ord. No. 164, August 17, 1972; Sec. 8-5.7, R.C.O. 1976)

Sec. 8-5.8 Maximum Residential And Resort Densities Within Commercial Districts.

(a) Neighborhood Commercial. The allowable maximum residential density shall be the greater of the following:

(1) that permitted in an R-10 District;

(2) that permitted in any Residential District that adjoins the Neighborhood Commercial District in question.

(b) General Commercial. The allowable maximum densities shall be as follows:

(1) That permitted in an R-20 District.
(2) Hotels: That permitted in an RR-20 District.
(3) Motels: That permitted in an RR-10 District.
(Ord. No. 164, August 17, 1972; Sec. 8-5.8, R.C.O. 1976)

ARTICLE 6. INDUSTRIAL DISTRICTS (I)

Sec. 8-6.1 Purpose.

(a) To provide areas for the location of commercial, industrial, processing and manufacturing uses which are not compatible with those permissible activities and uses in the Commercial or Residential Districts.

(b) To regulate and control development, construction, organization or subdivision for those uses.

(c) To assure that uses which are potentially detrimental to the health, safety and welfare of the public have been located, developed or constructed to substantially eliminate their potential detrimental effects. (Ord. No. 164, August 17, 1972; Sec. 8-6.1, R.C.O. 1976)

Sec. 8-6.2 Types Of Industrial Districts.

(a) There are two (2) Industrial Districts:
(1) Limited Industrial
(2) General Industrial

(b) Limited Industrial shall include uses which are generally in support of but not necessarily compatible with permissible uses in the Commercial District. These Districts shall normally be established within reasonable accessibility and convenience to General Commercial Districts and where there is adequate access to a major thoroughfare.

(c) General Industrial shall include all business, industrial processing, or storage uses that are generally considered offensive to the senses or pose some potential threat or hazard to health, safety and welfare. This District shall not be located adjacent to residential or resort districts unless there is physical or geographical protection from those characteristics of the uses considered to be offensive or hazardous. (Ord. No. 164, August 17, 1972; Sec. 8-6.2, R.C.O. 1976)

Sec. 8-6.3 Generally Permitted Uses And Structures.

(a) Limited Industrial. The following uses and structures in limited industrial districts are permitted:
(1) Accessory uses and structures
(2) Animal hospitals
(3) Automobile services, sales, repair and storage
(4) Cemeteries, mortuaries and crematoriums
(5) Communication facilities

(6) Construction material storage
(7) Food processing and packaging
(8) Light manufacturing
(9) Manufacturing in retail sales
(10) Private and public utilities and facilities
(11) Public parks and monuments
(12) Research and development
(13) Restaurants, bars and food services
(14) Retail sales
(15) Warehouses

(b) General Industrial. The following uses and structures in general industrial districts are permitted:

(1) Accessory uses and structures
(2) Animal hospitals
(3) Automobile services, sales, repair and storage
(4) Cemeteries, mortuaries and crematoriums
(5) Communication facilities
(6) Construction material manufacturing
(7) Construction material storage
(8) Excavation and extraction
(9) Factories
(10) Food processing and packaging
(11) Light manufacturing
(12) Manufacturing in retail sales
(13) Mineral processing
(14) Private and public utilities and facilities
(15) Public parks and monuments
(16) Restaurants, bars and food services
(17) Research and development
(18) Retail sales
(19) Transportation terminals and docks
(20) Warehouses

(Ord. No. 164, August 17, 1972; Sec. 8-6.3, R.C.O. 1976)

Sec. 8-6.4 Uses And Structures In Industrial Districts That Require A Use Permit.

(a) Limited Industrial. The following uses and structures in limited industrial districts shall require a use permit:

(1) Botanic and zoologic gardens
(2) Commercial recreation and parks
(3) Construction materials manufacturing
(4) Diversified agriculture
(5) Factories
(6) Junk yards and dumps
(7) Livestock and poultry yards
(8) Museums, libraries and public services
(9) Office and professional buildings
(10) Project development in accordance with Article 18 of this Chapter

(11) Single family dwellings
(12) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Director.

(b) General Industrial. The following uses and structures in general industrial districts shall require a use permit:

(1) Commercial recreation and parks
(2) Diversified agriculture
(3) Inflammable or noxious chemical processing or storage
(4) Junk yards and dumps
(5) Livestock and poultry yards and piggeries
(6) Museums, libraries and public services
(7) Office and professional buildings
(8) Project development in accordance with Article 18 of this Chapter
(9) Stockyards
(10) Any other use or structure which the Planning Director finds to be similar in nature and appropriate to the district.

(Ord. No. 164, August 17, 1972; Sec. 8-6.4, R.C.O. 1976)

Sec. 8-6.5 Standards For Industrial Development, Subdivision Or Construction.

(a) Lot size. Lot size shall be as follows:

(1) The minimum lot area that may be created or developed in a Limited Industrial District shall be ten thousand (10,000) square feet.

(2) The minimum lot area that may be created or developed in a General Industrial District shall be ten thousand (10,000) square feet.

(3) Any existing legal lot or parcel of record as of August 17, 1972, that is smaller than the required size, may be developed for industrial use.

(4) Lot or parcel area shall be calculated in accordance with Sec. 8-3.8(b).

(b) Setback Requirements. Unless as otherwise specified under paragraph (3) below, setback requirements shall be as follows:

(1) Minimum distance from property lines in a Limited Industrial District:

(A) The minimum distance of any building from the right-of-way line of a public or private street shall be ten (10) feet unless the building is entered from that side by motor vehicles in which case the minimum distance shall be fifteen (15) feet.

(B) The minimum distance from any building to a side property line when the adjacent use

district is industrial or commercial shall be zero. When the adjacent use district is other than industrial or commercial, the minimum distance to the side property line shall be ten (10) feet.

(C) The minimum distance of any building to a rear property line when the adjacent use district is industrial or commercial shall be zero. When the adjacent rear use district is other than industrial or commercial, the minimum distance to the rear property line shall be ten (10) feet.

(2) Minimum distances from property lines in a General Industrial District:

(A) Minimum distance of any building from the right-of-way of a public or private street shall be fifteen (15) feet.

(B) Minimum distance of any building from a side property line when the adjacent use district is industrial shall be zero. When the adjacent use district is other than industrial, the minimum distance to the side property line shall be fifteen (15) feet.

(C) Minimum distance of any building to a rear property line shall be fifteen (15) feet.

(3) The Planning Director may impose greater setback requirements because of topographic, drainage, air, landscaping, or other health, safety and welfare conditions.

(c) Minimum Distance Between Buildings. The minimum distance between detached buildings on the same parcel shall be ten (10) feet.

(d) Parcel Dimension Requirements. No parcel shall be created unless:

(1) It has a minimum frontage on a public street of seventy-five (75) feet in a Limited Industrial District and one hundred (100) feet in a General Industrial District;

(2) The average depth of the parcel is not greater than four (4) times its average width in either District; and

(3) The minimum average width is seventy-five (75) feet in a Limited Industrial and one hundred (100) feet in a General Industrial district.

(e) Driveways and Parking Areas. Driveways and parking areas shall be as follows:

(1) The minimum driveway width in Industrial Districts shall be twenty (20) feet if there is two-way traffic and fourteen (14) feet if there is one-way traffic.

(2) Parking areas shall conform to standards of design and construction established by the County Engineer, provided that:

(A) No parking lot pavement edge may be located closer than five (5) feet from the right-of-way line of a public street;

(B) No part of parked vehicles shall protrude into that setback;

(C) All parking lots shall be screened from public thoroughfares by a fence, wall or plant screen not less than four (4) feet high, provided that the screening height shall be lowered to the standard as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations. The setback area between the parking area paving and the public right-of-way shall be planted and shall not be paved.

(3) Paved off-street parking shall be provided as follows:

(A) One (1) parking stall for each three (3) employees, or one (1) parking stall for every five hundred (500) square feet of gross floor area of the buildings where the number of employees is unknown;

(B) One (1) parking stall designated for visitors for each two hundred (200) square feet of office space; and

(C) Parking spaces for trucks, equipment, or other vehicles used in the conduct of the business.

(D) The Planning Director shall determine the distribution of requirements for any particular use or combination of uses and may increase parking requirements when particular uses or locations occur in areas where unusual traffic congestion or conditions exist or are projected.

(f) Building Height. No building or portion thereof shall exceed thirty (30) feet in height in a Limited Industrial District or fifty (50) feet in height in a General Industrial District unless it can be demonstrated that a greater height is essential to the functioning of the development and that no reasonable alternative exists.

(g) Sewers. All industrial development accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with standards established by the Department of Public Works and the State Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the

requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(h) Environmental Impact Statement. The Planning Director, the Planning Commission, or the County Engineer may require an Environmental Impact Statement to be submitted prior to the issuance of any zoning, use or variance permit when there is any operation, material or activity which constitutes a potential threat to public health, safety and welfare or to the quality of the environment. When requiring such a statement the precise nature of the items that the Environmental Impact Statement shall cover shall be indicated.

(i) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-6.5, R.C.O. 1976; Ord. No. 400, October 8, 1980)

Sec. 8-6.6 Permits Required.

(a) No construction or other development for which Standards are established in this Chapter shall be undertaken within any Industrial District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

(1) Class I Permit. A Class I Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint or a Special Treatment District and is not larger than fifteen thousand (15,000) square feet; and

(B) the construction or development does not require a use permit, a variance permit or an environmental impact statement.

(2) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is larger than fifteen thousand (15,000) square feet but not larger than twenty- five thousand (25,000) square feet; and

(B) the construction or development does not require a use permit, variance permit or an environmental impact statement.

(3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel where:

(A) the parcel is larger than twenty-five thousand (25,000) square feet but not larger than one (1) acre, whether or not the parcel is located in a Constraint District or a Special Treatment District, and the construction or development does not require a variance permit or an environmental impact statement, or

(B) for construction or development on a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) larger than one (1) acre, whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit, variance permit or environmental impact statement is required; or

(B) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit or an environmental impact statement is required.

(5) To obtain any permit the applicant shall show compliance with the Standards established in this Section and shall submit a plot plan and other information as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-6.6, R.C.O. 1976)

Sec. 8-6.7 Application To Industrial Development In Other Districts.

All industrial construction, development or use permitted by, or in accordance with this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article. (Ord. No. 164, August 17, 1972; Sec. 8-6.7, R.C.O. 1976)

ARTICLE 7. AGRICULTURE DISTRICTS (A)

Sec. 8-7.1 Purpose.

(a) To protect the agriculture potential of lands within the County of Kauai to insure a resource base adequate to meet the needs and activities of the present and future.

(b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses.

(c) To limit and control the dispersal of residential and urban use within agriculture lands. (Ord. No. 164, August 17, 1972; Sec. 8-7.1, R.C.O. 1976)

Sec. 8-7.2 Generally Permitted Uses And Structures.

The following uses and structures are permitted in agriculture districts:

(1) Accessory structures and uses
(2) Aquaculture
(3) Diversified agriculture
(4) Forestry
(5) Grazing
(6) Historic sites
(7) Intensive agriculture
(8) Livestock, poultry, and piggeries, except as provided in Sec. 8-7.3
(9) Minor food processing related to agricultural products
(10) Orchards and nurseries
(11) Outdoor recreation
(12) Pet keeping and raising, except as provided in Sec. 8-7.3
(13) Public parks and monuments
(14) Resource management
(15) Single family detached dwellings
(16) Specialized agriculture
(17) Undeveloped campgrounds
(18) Warehousing, storage and packing of plant products
(19) Wildlife management

(Ord. No. 164, August 17, 1972; Sec. 8-7.2, R.C.O. 1976)

Sec. 8-7.3 Uses And Structures That Require A Use Permit.

(a) The following uses and structures in agricultural districts shall require a use permit:

(1) Animal hospitals
(2) Cemeteries
(3) Churches, temples and monasteries
(4) Commercial recreation
(5) Construction and worker temporary housing
(6) Development campgrounds
(7) Golf courses
(8) Mineral extraction and quarries
(9) Pet keeping and raising proposed within five hundred (500) feet of any Residential District
(10) Poultry and piggeries when to be located within three thousand (3000) feet of any Use District
(11) Private and public utility facilities
(12) Schools and day care centers

(13) Transportation terminals
(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District. (Ord. No. 164, August 17, 1972; Sec. 8-7.3, R.C.O. 1976)

Sec. 8-7.4 Limitations On Subdivisions Of Parcels In Agriculture Districts.

(a) Purpose:

(1) To limit, retard and control subdivision of agriculture land that will destroy agriculture stability and potential.

(2) To avoid the dissipation of agriculture lands by excessive or premature parceling for other than agriculture uses.

(3) To establish and maintain a proportionate mix of parcel sizes to accommodate optimum sizes for existing or potential agricultural uses.

(4) To establish a relationship between the size of the parcel to be subdivided and the size of the smaller parcels created by the subdivision, in order to maintain large parcels for agricultural uses and activities best carried out on large parcels and to maintain and provide smaller parcels of various sizes for agricultural uses that can be carried out most efficiently on smaller parcels.

(b) Method of Calculating Allowable Subdivision of Agriculture Lands.

(1) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, no larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) parcels not more than ten (10) acres may be subdivided into parcels not less than one (1) acre in size.

(B) parcels larger than ten (10) acres, but not more than twenty (20) acres, may be subdivided into parcels not less than two (2) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(C) parcels larger than twenty (20) acres, but not more than thirty (30) acres, may be subdivided into parcels not less than three (3) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(D) parcels larger than thirty (30) acres, but not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.

(E) parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.

(2) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) a maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.

(B) an additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.

(C) the balance of the parcel area, shall not be subdivided.

(c) Limitations on Resubdivision of any Parcel in an Agriculture District Subsequent to September 1, 1972. Except as provided herein, no parcel resulting from a subdivision approved after September 1, 1972, shall be resubdivided unless the parcel is transferred to the Urban or Rural Districts under the provisions of the State Land Use Law and is transferred to a use district other than Agriculture or Open, under the provisions of this Ordinance. The restriction in this subsection shall not apply to any lot resulting from:

(1) Subdivision requested by any governmental agency;

(2) Subdivision resulting from the construction of public improvements by governmental action;

(3) Subdivision requested for public utility purposes;

(4) Consolidation and resubdivision of properties where no additional lots or parcels are created provided that the resulting properties would not permit greater density.

However, any parcel of record thirty acres or less existing prior to August of 1972 and subsequently subdivided which has not maximized density as prescribed in Subsection 8-7.4(b)(1), may be further subdivided in accordance with said subsection.

(d) Automatic Review of the Provisions of This Section. The provisions of this Article and the boundaries of the Agriculture District shall be comprehensively reviewed by the Planning Commission in accordance with the requirements and procedures of Sec. 8-7.4(d) no later than two (2) years after the effective date of this Ordinance and every succeeding five (5) years thereafter. (Ord. No. 164, August 17, 1972; Ord. No. 186, July 17, 1973; Sec. 8-7.4, R.C.O. 1976; Ord. No. 559, November 27, 1989)

Sec. 8-7.5 Permitted Residential Densities.

Permitted residential densities shall be calculated as follows:

(1) One (1) dwelling unit for each parcel one (1) acre or larger.

(2) One (1) additional dwelling unit for each additional three (3) acres in the same parcel, provided that no more than five (5) dwelling units may be developed on any one (1) parcel.

(3) A parcel or contiguous parcels in common ownership of record existing prior to or on September 1, 1972, which is smaller than one (1) acre, may develop one (1) dwelling unit. (Ord. No. 164, August 17, 1972; Sec. 8-7.5, R.C.O. 1976)

Sec. 8-7.6 Development Standards For Construction And Use.

Subject to the density, parcel and other requirements of Sec. 8-7.4 and Sec. 8-7.5, the development standards applicable in an Agriculture District shall be the same as those established in Secs. 8-3.5 and 8-3.7 of this Chapter, except that:

(1) The minimum average lot width shall be one

hundred and fifty (150) feet.

(2) The average length of any lot shall not be greater than four (4) times its width.

(3) The maximum height of any building, other than one intended primarily for residential use, shall be fifty (50) feet.

(4) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-7.6, R.C.O. 1976)

Sec. 8-7.7 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Agriculture District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

(1) Class I Permit. A Class I Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not large enough to qualify for more than one (1) dwelling unit under the density provisions of this Article; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(2) Class II Permit. A Class II Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is qualified for more than one (1) dwelling unit; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(3) Class III Permit. A Class III Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development of a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development for which a Class I, II, or III Permit would otherwise

be obtainable except that a variance or a use permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Article and shall submit a plot plan and other information as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-7.7, R.C.O. 1976)

Sec. 8-7.8 Application To Agricultural Development In Other Districts.

All agricultural construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article. (Ord. No. 164, August 17, 1972; Sec. 8-7.8, R.C.O. 1976)

ARTICLE 8. OPEN DISTRICTS (O)

Sec. 8-8.1 Purpose.

(a) To preserve, maintain or improve the essential characteristics of land and water areas that are:

(1) of significant value to the public as scenic or recreational resources;

(2) important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;

(3) necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.

(b) To preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.

(c) To define and regulate use and development within areas which may be potentially hazardous.

(d) To include areas indicated on the County General Plan as open or as parks.

(e) To include areas clearly indicated on the County General Plan or on Zoning maps as "Special Treatment - Open Space" if an applicant represents to government authorities that any properties or areas within a development proposal or subdivision application will remain in either permanent open space or private park areas, or if the Council in the exercise of its zoning power requires as a condition of rezoning that an area be designated for permanent open space or private park. This does not preclude the Council from exercising its zoning authority as provided in Sec. 46-4, Hawai'i Revised Statutes. Within areas so designated, no uses, structures, or development inconsistent with such designation shall be generally permitted or permitted by use permit without express provision to the contrary. The Council is hereby authorized

to make such factual determinations as necessary incident to this section.

(f) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public. (Ord. No. 164, August 17, 1972; Sec. 8-8.1, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.2 Generally Permitted Uses And Structures.

(1) Accessory uses and structures
(2) Day-use areas
(3) Diversified agriculture
(4) Livestock and grazing, except as provided in Sec. 8-8.3
(5) Outdoor recreation
(6) Parks and monuments
(7) Private recreation areas
(8) Resource management
(9) Single family detached dwellings
(10) Undeveloped campgrounds

(Ord. No. 164, August 17, 1972; Sec. 8-8.2, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.3 Uses And Structures For Which A Use Permit Is Required.

(1) Communications facilities
(2) Day care centers
(3) Developed campgrounds
(4) Home businesses
(5) Intensive agriculture
(6) Livestock and grazing within the Urban District as established by the State Land Use Commission
(7) Organized recreation camps
(8) Outdoor recreation concessions
(9) Police and fire facilities
(10) Quarries
(11) Recreation vehicle parks
(12) Religious facilities
(13) Utility installations
(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.

(Ord. No. 164, August 17, 1972; Sec. 8-8.3, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.4 Special Standards For Issuance Of Use Permits.

Where a parcel is adjacent to, or within one thousand (1,000) yards of, a Use District or Districts other than an Open District, no use permit shall be issued for uses and structures on parcels which are not generally permitted, or permitted under a use permit, in all adjacent or proximate

Districts. (Ord. No. 164, August 17, 1972; Sec. 8-8.4, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.5 Development Standards For Construction And Use Within An Open District.

(a) Land Coverage:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed ten per cent (10%) of the lot or parcel area.

(2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the ten per cent (10%) land coverage limitation.

(3) At least three thousand (3,000) square feet of land coverage shall be permissible on any parcel of record existing prior to or on September 1, 1972.

(b) Residential Densities. Except as otherwise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission, and no more than one (1) single family detached dwelling unit per five (5) acres of land shall be permitted when the parcel is located within an area designated as "Agriculture" by the State Land Use Commission, provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.

(1) Where the parcel is located within an area designated "Urban" by the State Land Use Commission, one (1) single family detached dwelling unit per one (1) acre of land shall be permissible if the existing average slope of the parcel is no greater than ten percent (10%).

(c) Subdivision.

(1) No parcel or lot shall be created which is less than three (3) acres in size within an area designated as "Urban" or "Rural" by the State Land Use Commission, or less than five (5) acres in size within an area designated as "Agriculture" by the State Land Use Commission, except within an "Urban" area a lot or parcel may be created which is one (1) acre or more in size if the existing average slope of the lot or parcel thus created is no greater than ten per cent (10%).

(2) No parcel or lot shall be subdivided when the improvements on the parcel meet or exceed the density and land coverage requirements of this Article.

(3) No portion of any parcel previously used as the basis for the calculation of allowable density or subdivision in any other District shall subsequently be subdivided or used as the basis for any other density or land coverage calculation.

(d) Development standards. Subject to the density and subdivision restrictions in Sec. 8-8.5(c), the development

requirements for use development or subdivision within an Open District shall be:

(1) The same as the requirements for the District in which the proposed use would be permitted under other provisions of this Chapter.

(2) The same as the requirements of Secs. 8-3.6 and 8-3.7 of the Residential District if no use is indicated or if the use proposed is not readily assignable to any other Use District.

(3) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-8.5, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.6 Calculation Of Densities And Land Coverage.

(a) The area in connection with which the permissible densities shall be calculated shall consist of that lot or lots, or parcel owned or controlled by the applicant designated in the permit application as part of the land development for which the permit is sought.

(b) When an area is included in the Open District because it is within the Constraint District, the precise boundary of the Open District shall be established to reflect the physical or ecological considerations upon which the particular Constraint District is based, regardless of lot or parcel boundaries. In those cases, that portion of the lot or parcel included in Open District may be included in any calculation of permitted densities and land coverage to be carried out on that portion of the parcel that is not within the Open District, provided that the total amount of density and land coverage shall be no more than one and one-half (1-1/2) that which would be permissible if the Open District portion of the lot or parcel was excluded from the calculation.

(c) Open Space. When a subdivision meeting the density and parcel area requirements of Sec. 8-3.6, Sec. 8-7.4, Sec. 8-7.5, Sec. 8-8.5(b), Sec. 8-8.5(c), and Sec. 8-8.6 results in the designation of areas within the subdivision for open space use, the areas shall be designated on the final subdivision map and Zoning map as open space, and, in that case, upon approval of the final subdivision map the areas shall automatically be transferred to the "Open District, Special Treatment - Open Space" for zoning purposes. (Ord. No. 164, August 17, 1972; Sec. 8-8.6, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.7 Permits Required.

No construction or other development for which Standards are established in this Chapter shall be undertaken within any Open District except in accordance with a valid zoning permit.

The requirements for zoning permits shall be the same as those established in Sec. 8-7.7 of this Chapter. Where no definite Class Permit is specified for any use application, Class II Zoning Permit procedure shall apply. (Ord. No. 164, August 17, 1972; Sec. 8.8-7, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-8.8 Review Of Open District Designations In Particular Cases.

In some cases, lands have been included in the Open District that are designated for Residential or other use in the County General Plan. Such Open District zoning reflects a judgment that such lands are not now needed for the uses indicated in the General Plan. To assure timely consideration of whether such need has arisen, the Planning Commission shall review the status of such lands no later than five (5) years after the effective date of this Ordinance, and every succeeding five (5) years thereafter. (Ord. No. 164, August 17, 1972; Sec. 8-8.8, R.C.O. 1976; Ord. No. 813, January 16, 2004)

ARTICLE 9. SPECIAL TREATMENT DISTRICTS (ST)

Sec. 8-9.1 Purpose.

(a) To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.

(b) To insure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public. (Ord. No. 164, August 17, 1972; Sec. 8-9.1, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-9.2 Types Of Special Treatment Districts.

(a) There are four (4) Special Treatment Districts as follows:

(1) Public Facilities (ST-P). All public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses.

(2) Cultural/Historic (ST-C). Communities and land or water areas which have a particular and unique value to the general public because of significant historic background, structures, or land forms.

(3) Scenic/Ecologic Resources (ST-R). Land and water areas which have unique natural forms, biologic

systems, or aesthetic characteristics which are of particular significance and value to the general public.

(4) Open Space (ST-O). Areas which, pursuant to Article 8 ("Open Districts"), have been designated as "open space" areas. (Ord. No. 164, August 17, 1972; Sec. 8-9.2, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-9.3 Generally Permitted Uses, Structures And Development.

All uses, structures, or development shall require a Use Permit, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three (3) dimensional structures or land; provided that no uses, structures, or development shall be allowed in Special Treatment-Open Space Districts without express provision to the contrary. In addition, such repairs or modifications do not require a Zoning Permit. (Ord. No. 164, August 17, 1972; Sec. 8-9.3, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-9.4 Uses, Structures And Development Requiring A Use Permit.

(a) Any use, structure or development permitted with or without a Use Permit in the underlying Use District in which the parcel or lot is located that is consistent with an approved plan for development in accordance with Sec. 8-9.5.

(b) Repairs or modifications of land and existing structures that substantially change the exterior form or appearance of the structures or land in a manner inconsistent with the surrounding area within the Special Treatment District.

(c) No uses, structures, or development shall be allowed by Use Permit in Special Treatment-Open Space Districts without express provision to the contrary. (Ord. No. 164, August 17, 1972; Sec. 8-9.4, R.C.O. 1976; Ord. No. 813, January 16, 2004)

Sec. 8-9.5 Applications For Use Permits.

(a) The procedures are in addition to those established in Articles 19 and 20.

(b) Before making an application, the applicant shall be informed of the particular reasons for the establishment of the Special Treatment District in which the applicant's land is located.

(c) Applications shall be accompanied by plans and three (3) dimensional drawings or models which clearly indicate the relation of the proposed development to other uses and structures within the Special Treatment District and the ways in which the proposed development is consistent with the reasons for the establishment of the District. Plans shall indicate the location of all existing and proposed topography, buildings, walks, driveways, and utilities and plant material within the boundaries of the applicant's parcel and the existing or proposed streets, sidewalks, driveways, trees,

buildings, and topography on adjacent lands as required by the Planning Director, but no less than two hundred (200) feet from property lines of the parcel which abut a public thoroughfare, park or facility and one hundred (100) feet from the property lines of the parcel which abut privately owned property. Aerial photography may be utilized to meet these requirements if approved by the Planning Director.

(d) In addition to the foregoing, the applicant may be required to provide:

(1) Cross sections, elevations, perspectives or models of any of the areas defined in this Article in order to illustrate the proposed development's three (3) dimensional relationship to surrounding areas;

(2) Information concerning color, form, mass or shape of the structures in the proposed development and concerning the proposed development's impact on environmental characteristics such as sun and shadow, wind, noise, ecology, traffic and visual appearance; and

(3) Information concerning the impact of the proposed development on public services or utilities and social and economic structure or cultural characteristics.

(e) The Planning Director may waive any of the requirements established in this Section for proposals involving parcels of less than one (1) acre in the Residential, Agriculture, or Open Districts, except in the Special Treatment-Open Space District, or less than ten thousand (10,000) square feet in the Commercial or Industrial Districts. (Ord. No. 164, August 17, 1972, Sec. 8-9.5, R.C.O. 1976; Ord. No 813, January 16, 2004)

Sec. 8-9.6 Special Planning Areas.

(a) The Planning Commission may formulate Development Plans for any Special Treatment District or for any regional or subregional areas which are of particular county, state or federal value because of unique physical, ecologic or cultural characteristics or are determined to be critical areas of concern to the general economic, social or physical development of the County.

(b) The District or areas shall be designated as Special Planning Areas. The boundaries of the areas shall be established by the Planning Commission and recorded on the zoning maps.

(c) Development Plans for Special Planning Areas shall include, whenever appropriate and practical, the following:

(1) A review of existing physical characteristics, including public and private improvements, ownership, use and factors concerning geographic, ecologic, scenic, and resources features;

(2) A review of the social, economic, cultural and historic characteristics of the area;

(3) A statement concerning community goals, values, and objectives and the methods for involving the community in the planning process;

(4) A statement of the goals and objectives of the Development Plan and their relationship to the goals and objectives established in the General Plan, and an analysis of the specific problems inhibiting the accomplishment of the goals and objectives based on an analysis of existing conditions;

(5) A program of specific activities, improvements and modifications necessary to accomplish the stated goals and objectives;

(6) A physical development plan at scale of detail appropriate to the existing conditions and to feasible methods of implementation, that indicates the location and nature of programmed activities and improvements, including:

(A) housing by density and type of dwelling units;

(B) transportation and circulation by type, including pedestrian, bicycle, parking and related facilities;

(C) recreation and open space by activity and function;

(D) agricultural uses and structures;

(E) commercial, industrial and resort uses and structures.

(7) The establishment of specific subdivision and development criteria, including setbacks, heights, permitted uses, and other design standards necessary for the implementation of the physical plan. The criteria may be more detailed than, or may vary from the requirements of the Use, Special Treatment and Constraint Districts within which a Special Planning Area has been located.

(8) A phasing and action priority program in four (4) five (5)-year increments with an Estimated Capital Improvement Program decreasing in detail with each increment.

(d) The Planning Department shall review each Development Plan formulated under this Article no less than every five (5) years after its adoption and shall revise and update all plan elements consistent with the conditions that prevail at the time of the review.

(e) Upon adoption by the Council, the provisions of the Development Plan shall constitute regulations and shall supersede conflicting regulations applicable in the Use, Special Treatment and Constraint Districts within which the Special Planning Area is located. Regulations and requirements not so superseded shall remain in force.

(f) After the Council adopts a Development Plan for a Special Planning Area, no development, use or activity may be undertaken in the area that is contrary to the Development Plan. (Ord. No. 164, August 17, 1972; Sec. 8-9.6, R.C.O. 1976)

Sec. 8-9.7 Scenic Corridors And Points.

(a) Purpose. To preserve, maintain and improve visual access and quality from major public thoroughfares or areas of public value and to define criteria and procedures necessary to achieve those ends.

(b) Land Included. Scenic corridors shall be as indicated on the General Plan and the Zoning maps and shall include by reference all land and water areas visible from the center line of the corridor or the scenic point, or to a lesser distance as the Planning Director shall determine.

(c) Requirements of Development and Structures Within a Scenic Corridor.

(1) The Planning Director may require the applicant to furnish graphic or pictorial material sufficient to indicate the nature of the proposed use,

development or structure and its relation to the view from that portion of the corridor or point which may be affected.

(2) The Planning Director or his designee shall ascertain whether the proposed development, structure, or use proposed will block, disrupt, or significantly change the visual accessibility or quality of the scenic corridor.

(3) The Planning Director may approve, approve with conditions, or refer the application to the Planning Commission with recommendations. Upon reference, the Planning Commission shall, in such case, approve, with conditions, or deny the permit.

(4) The Planning Director and the Planning Commission shall not deny an application if the denial would create undue hardship on the applicant, but shall nevertheless impose constructive and reasonable requirements on the development to protect the scenic quality of the corridor.

(d) The Planning Commission may require that visually disruptive or offensive activities, facilities, or structures that are within three hundred (300) feet of the public right-of-way be screened from view from the thoroughfare by an acceptable structural or plant screen. (Ord. No. 164, August 17, 1972; Sec. 8-9.7, R.C.O. 1976)

ARTICLE 10. CONSTRAINT DISTRICTS (S)

Sec. 8-10.1 Purpose.

(a) To implement the objectives of the six (6) Development Restriction Zones established in the General Plan.

(b) To identify those areas where particular physical, biologic and ecologic characteristics of the land, water and atmosphere indicate that standard requirements for development, modification or use may be inadequate to insure the general health, safety or welfare of the public or the maintenance of established physical, geologic and ecologic forms and systems.

(c) To insure that development, modification or use will not create substantial threats to health, safety and welfare of people, or to the maintenance of established physical, biologic, and ecologic forms and systems.

(d) To permit development, modification or use when it can be shown, within the limits of available knowledge, that ecologic interrelationship will be improved or not significantly depreciated. (Ord. No. 164, August 17, 1972; Sec. 8-10.1, R.C.O. 1976)

Sec. 8-10.2 Types Of Constraint Districts And Application.

(a) There are six (6) Constraint Districts as follows:

(1)	Drainage Districts	S-DR
(2)	Flood Districts	S-FL
(3)	Shore Districts	S-SH
(4)	Slope Districts	S-SL
(5)	Soils Districts	S-SO
(6)	Tsunami Districts	S-TS

(b) The standards established in each Constraint District shall apply to all modifications, development or uses which are undertaken on lands within the boundaries of the Districts and shall be in addition to the development standards applicable to lands in the underlying Use and Special Treatment Districts in which the lands are located.

(c) When land is located in more than one (1) Constraint District, the more restrictive standard concerning any subject matter of regulation shall apply.

(d) Applications for Zoning or Use Permits for uses, structures and development in Constraint District shall include the information required by, and shall establish conformity to the standards established for, the Constraint District or Districts in which the lands in question are located. (Ord. No. 164, August 17, 1972; Sec. 8-10.2, R.C.O. 1976)

ARTICLE 11. DRAINAGE DISTRICTS (S-DR)

Sec. 8-11.1 Purpose.

(a) To protect the function of natural and existing water courses as a part of the system for surface water collection and dispersal.

(b) To maintain the quality of surface and marine water as a valuable public resource.

(c) To regulate the modification of water. (Ord. No. 164, August 17, 1972; Sec. 8-11.1, R.C.O. 1976)

Sec. 8-11.2 Lands Included In The Drainage District.

(a) The Drainage District includes all rivers, streams, storm water channels, and outfall areas indicated in the Development Restriction Zones of the General Plan and other areas of similar physical characteristics and conditions.

(b) Within two (2) years after the date of adoption of this Ordinance, the Department of Public Works on the basis of available information, shall prepare a master drainage plan for the County that shall include:

(1) The boundaries of watershed areas one hundred (100) acres or larger.

(2) A classification of all rivers, streams, and water carrying channels based on calculated existing carrying capacities and potential carrying capacities.

(3) The limitations on increased quantities of water by watershed which may be added to any channel.

(4) Water quality control standards and criteria for all constant flowing rivers and streams and marine outfalls.

(5) Proposed and anticipated channel revisions, new channels, and all required structural appurtenances or conditioning to channels, with estimated costs and projected scheduling of improvements.

(6) Standards, regulations and procedures concerning drainage practices in connection with development that effects water quality and quantity.

(c) Upon approval by the Planning Commission and adoption by the Council, this master drainage plan shall supplement the requirements of this Article. (Ord. No. 164, August 17, 1972; Sec. 8-11.2, R.C.O. 1976)

Sec. 8-11.3 Requirements For Development Within A Drainage District.

Prior to the adoption of a master drainage plan, no zoning, building or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Drainage District be permitted, unless the applicant establishes conformity with the requirements of this Article.

(1) No water course or outfall of a water course shall be modified, constricted, altered, piped, lined or substantially changed in any way unless first approved by the Department of Public Works.

(2) Development shall not be allowed on land adjacent to water courses which increases the flow at peak discharge above the capacity of its present channel, or materially increases the flood plain of downstream water courses.

(3) Pollutants shall not be discharged into any natural water course that are considered harmful or dangerous by state, federal or county health or water control authorities to the public or to vegetation and wildlife.

(4) Development shall not be allowed that causes discharge or runoff of substantial amounts of silt, construction materials, trash, solid waste or other deleterious material.

(5) The Department of Public Works shall require that detailed plans and calculations accompany applications for development or modifications of any water course or of any development, grading or clearing of any land area. (Ord. No. 164, August 17, 1972; Sec. 8-11.3, R.C.O. 1976)

Sec. 8-11.4 Modification Of Requirements.

The requirements of this Article shall not apply to any area within the Drainage District where the applicant demonstrates to the satisfaction of the Department of Public Works, that the area in question should not have been included in the Drainage District under the criteria established in Sec. 8-11.2. (Ord. No. 164, August 17, 1972; Sec. 8-11.4, R.C.O. 1976)

ARTICLE 12. FLOOD DISTRICT (S-FL)

Sec. 8-12.1 Purpose.

(a) To minimize the threat to public health and safety due to periodic inundation by storm water.

(b) To maintain the characteristics of flood plain areas which contribute to ground water recharge, storm water storage, silt retention and marine water quality. (Ord. No. 164, August 17, 1972; Sec. 8-12.1, R.C.O. 1976)

Sec. 8-12.2 Lands Included.

All lands subject to flooding and identified as flood fringe, floodway, and general flood plain areas by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the County of Kauai", dated March 9, 1987, with accompanying Flood Insurance Rate Maps. (Ord. No. 164, August 17, 1972; Sec. 8-12.2, R.C.O. 1976; Ord. No. 416, October 28, 1981; Ord. No. 500, March 31, 1987)

Sec. 8-12.3 Requirements For Development Within A Flood District.

No zoning, building, or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Flood District be permitted, unless the applicant establishes conformity with the requirements of this Article.

(a) Applications shall include:

(1) Development plans indicating:

(A) The location, size, nature, and intended use of all buildings, roads, walkways and other impervious surfaces;

(B) Limits and extent of all clearing and grading operations; grading plans showing existing and revised contour lines; cross sections showing cuts and fills anticipated; angles of slopes and structural appliances such as retaining walls and cribbing;

(C) Sizes and locations of existing and proposed surface and subsurface drainage with expected quantities, velocities, and treatment of outfalls;

(D) Provisions for siltation and erosion control during construction and plans for revegetation of all cleared or graded areas not covered by impervious surfaces;

(E) Identification of flood hazards on the site, including the delineation of the floodways and base flood elevations.

(2) When required by the Department of Public Works, hydrologic and geologic reports showing the effects of the development on ground water recharge, storm water retention and marine water quality shall be submitted.

(3) When required by the Planning Director, an environmental impact study indicating critical areas of concern and the effects of the proposed development on physical, geologic, ecologic and environmental forms and systems such as downstream water quality, flood plains, wildlife, vegetation and marine ecologies, visual and historic amenities, and air or ground water pollution.

(b) The use, structure and development, if required, shall be subject to additional construction and development standards provided in Sec. 15-1, relating to Flood Plain Management.

(c) The applicant shall demonstrate to the satisfaction of the Planning Director, the Department of Public Works, and the Manager and Chief Engineer of the County Water Department that the proposed development will not have a detrimental effect on the ecology of the area and that the potential damage to public utility, traffic service systems, as a result of the development, has been substantially eliminated. (Ord. No. 164, August 17, 1972; Sec. 8-12.2, R.C.O. 1976; Ord. No. 416, October 28, 1981; Ord. No. 500, March 31, 1987)

Sec. 8-12.4 Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Flood District under the criteria established in Sec. 8-12.2. (Ord. No. 164, August 17, 1972; Sec. 8-12.4, R.C.O. 1976; Ord. No. 416, October 28, 1981)

ARTICLE 13. SHORE DISTRICTS (S-SH)

Sec. 8-13.1 Purpose.

To regulate development or alterations to shore and water areas which have unique physical and ecological conditions in order to protect and maintain physical, biologic and scenic resources of particular value to the

public. (Ord. No. 164, August 17, 1972; Sec. 8-13.1, R.C.O. 1976)

Sec. 8-13.2 Lands Included.

(a) The Shore District includes the greater of the following shoreline areas (land and water):

(1) That area where the Planning Director determines that there is significant interrelationship between the physical, biologic, or ecologic forms or systems characteristic of the shore area;

(2) From the low water mark to forty (40) feet inland from the upper reaches of the wash of waves other than storm or tidal waves (or twenty (20) feet in those cases as are provided for by the rules of the State Land Use Commission implementing Chapter 205, H.R.S.).

(b) Within five (5) years after the date of this Chapter the Planning Commission shall prepare a Shoreline Special Treatment Zone Plan. The plan upon adoption by the Planning Commission shall determine the boundaries of the Shore District. (Ord. No. 164, August 17, 1972; Sec. 8-13.2, R.C.O. 1976)

Sec. 8-13.3 Requirements For Development Within The Shore District.

No zoning, building or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Shore District be permitted, unless the applicant establishes conformity with the requirements of this Article.

(a) Applicants for permits shall furnish an Information Report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The Planning Director shall determine the adequacy of the report and may require the submission of further information where necessary. The report shall provide information regarding the existing ocean conditions and regarding probable effects of the proposed structures, development, or alterations, as follows:

(1) With respect to existing conditions, the report shall describe the configuration of the shore; the nature, magnitude, and periodicity of Shore District forces such as wind, waves and currents, as they affect the Shore District; the origin, nature and volume of materials composing the shoreline; the physical and biologic characteristics and the rate of Shore District change over time under both natural and proposed artificial conditions.

(2) With respect to probable effects of the proposed construction, the applicant shall define a design wave (usually the mean height and period of the highest one-third (1/3) of the waves of a given wave

group, including storm surge and tsunami), the design water level of the ocean, the foundation conditions, and the construction materials, and shall state how the proposed design and construction operations will minimize disruption of the natural system.

(3) With respect to assessing the quality of the proposed construction, the applicant shall describe alternatives to the proposed construction that were considered and why each was rejected, in terms of environmental quality and economic feasibility, including as one alternative the choice of no construction.

(b) Before a permit may be granted, the applicant shall establish that the proposed alteration, construction or activity will not cause significant harm to:

(1) The water quality of the ocean, including but not limited to its clarity, temperature, color, taste and odor;

(2) Fish and aquatic habitats;

(3) The natural beauty of the area;

(4) Navigation, safety or health; or

(5) Would not substantially interfere with public use of the ocean waters or underlying lands; and

(6) That other facilities are unavailable to the applicant.

(c) Marinas and harbors shall not be permitted in the following locations:

(1) Areas where, due to the amount of unconsolidated materials, wave and current energy, shoreline configuration, and other pertinent factors, beach erosion is likely to occur.

(2) Unstable locations.

(3) Areas designated by the Planning Commission as being of unique scenic beauty which should be retained in their natural condition.

(4) Areas where there is no demonstrable public need for a new marina or harbor.

(5) In areas so that the standards established in Section 8-13.3(b) are violated.

(6) Use Districts where marinas and harbors are not permitted uses.

(d) Marinas and harbors, when permitted, shall be located in the following areas unless the Planning Commission determines that the site would be inconsistent with the objectives of this Chapter or the applicant can demonstrate that such an area is unavailable and that the alternative site chosen will be consistent with the purposes of this Chapter.

(1) In deeper water in order to minimize the need for dredging.

(2) In natural inlets to avoid use of breakwaters.

(3) In an area designated for marinas and harbors on the General Plan.

(e) Design and Construction Standards:

(1) Floating piers or piers on pilings shall be used to provide access to boats, rather than dredging, whenever possible.

(2) Where dredging is permitted, spoil material shall not be deposited in the water.

(3) Where a barrier wall is required in connection with a marina, or harbor, it shall be carried deep enough below the bottom to prevent movement of back-fill materials into the water.

(4) Materials used to stabilize the bottom of the marina or harbor for pier structures shall be chemically inert sand, gravel, or similar substances.

(f) Shore Facilities. Restrooms, pump-out facilities for boat sewage receptacles, and trash receptacles for other boat wastes shall be provided at a marina or harbor.

(g) Monitoring Information Requirements. The owner or operator of a marina or harbor may be required to furnish information concerning water quality, current patterns and intensities, shore alterations, and any other conditions which may be altered by the construction of the marina or harbor for a reasonable period after completion of the facility.

(h) Location of Shoreline Protective Structures. To prevent local beach loss, shoreline protective structures shall be used only where protection of the back-shore is of greater importance than beach preservation, or where less disruptive methods have failed. The following design and construction standards shall apply:

(1) Sloping permeable revetments shall be used when barriers are permitted.

(2) Seawalls and bulkheads shall be permitted only when the applicant is able to demonstrate that revetments are not feasible and that the alternative structure will cause no undue beach erosion.

(3) Shoreline barriers shall not be constructed of unstable or soluble materials.

(i) There shall be no fill placed in the Shore District except at those locations where the fill is found to be beneficial to existing water quality or Shore District conditions.

(j) There shall be no dredging, removal or rearrangement of materials within the water or shore zone of the ocean. Dredging or excavation performed in the course of construction for which a permit has been approved under the terms of this Chapter shall be considered dredging or excavation for the purpose of this Article. (Ord. No. 164, August 17, 1972; Sec. 8-13.3, R.C.O. 1976)

Sec. 8-13.4 Permits Required.

(a) A Class IV Zoning Permit is required for any construction, development, use or activity proposed to be carried out within forty (40) feet of the upper reaches of the wash of waves other than storm or tidal waves, or within the shoreline setback area as established by the State Land Use Commission pursuant to Chapter 205, H.R.S., whichever is the lesser. The Planning Commission shall issue a permit only if the requirements of both Chapter 205, H.R.S. and this Chapter have been met.

(b) A Class III or Class IV Zoning Permit, depending upon the requirements established for the underlying Use District in which the proposed construction, development, use or activity is located, is required for undertakings in the Shore District established by this Chapter located landward of the shoreline setback area defined in Section 8-13.4(a). The Planning Director or Planning Commission shall issue a permit only if the requirements of this Chapter have been met. (Ord. No. 164, August 17, 1972; Sec. 8-13.4, R.C.O. 1976)

Sec. 8-13.5 Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Planning Director that the area in question should not have been included in the Shore District under the criteria established in Section 8-13.2. (Ord. No. 164, August 17, 1972; Sec. 8-13.5, R.C.O. 1976)

ARTICLE 14. SLOPE DISTRICTS (S-SL)

Sec. 8-14.1 Purpose.

(a) To insure public safety from earth slides and slips.

(b) To minimize erosion and attendant siltation of downstream waters.

(c) To insure safety from downstream flooding due to altered runoff characteristics.

(d) To protect ecologic functions such as ground water recharge, wildlife habitats, and vegetative communities. (Ord. No. 164, August 17, 1972; Sec. 8-14.1, R.C.O. 1976)

Sec. 8-14.2 Lands Included.

All land areas in excess of twenty percent (20%) slope (one (1) foot of rise or fall in five (5) feet measured horizontally). (Ord. No. 164, August 17, 1972; Sec. 8-14.2, R.C.O. 1976)

Sec. 8-14.3 Requirement For Development Within The Slope District.

No zoning, building, or use permit shall be issued, nor shall any use requiring the development, grading, or alteration of any portion of the Slope District be permitted, unless the applicant establishes conformity with the requirements of this Article.

(a) Applications for all subdivision development, land alteration or clearing, other than one (1) single family dwelling unit on an existing parcel shall include specific development plans indicating:

(1) The location, size, nature, and intended use of all buildings, roads, walkways and other impervious surfaces.

(2) Limits and extent of all clearing and grading operations; grading plans showing existing and revised contour lines; cross sections showing cuts and fills anticipated; angles of slopes and structural appliances such as retaining walls and cribbing.

(3) Sizes and locations of existing and proposed surface and subsurface drainage with expected quantities and velocities and treatment of outfalls.

(4) Provisions for siltation and erosion control during construction and plans and schedules for revegetation of all cleared or graded areas not covered by impervious surfaces.

(5) When required by the Department of Public Works, a soils and geology report by a soils engineer defining existing soil and geologic stability and other pertinent characteristics and certifying the stability of the proposed development.

(6) When required by the Planning Director, an environmental impact study indicating critical areas of concern and the effects of the proposed development on physical, biologic, ecologic and environmental forms and systems, such as downstream water quality, flood plains, wildlife, vegetation, and marine ecologies, visual and historic amenities, and air or ground water pollution.

(b) All graded areas not covered by a building or other impervious surfaces and all fill slopes steeper than one (1) foot of rise in three (3) feet horizontally shall be revegetated within six (6) months of the commencement of grading unless areas other than fill slopes must be left bare because of other construction activities. The Department of Public Works may require revegetation of portions of the graded area which in its opinion are not necessary to in-progress construction, or where significant construction activity has been suspended for over sixty (60) days. Grading operations which extend over one (1) year shall require a time extension from the Department of Public Works. All bare areas where excessive erosion and dust

problems may occur shall be revegetated prior to final inspection. (Ord. No. 164, August 17, 1972; Sec. 8-14.3, R.C.O. 1976)

Sec. 8-14.4 Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Slope District under the criteria established in Section 8-14.2. (Ord. No. 164, August 17, 1972; Sec. 8-14.4, R.C.O. 1976)

ARTICLE 15. SOILS DISTRICTS (S-SO)

Sec. 8-15.1 Purpose.

To minimize the threat to public health and safety as a result of development on soils that are unstable, have inadequate drainage characteristics, or require abnormal structural solutions because of load bearing or drainage characteristics. (Ord. No. 164, August 17, 1972; Sec. 8-15.1, R.C.O. 1976)

Sec. 8-15.2 Lands Included.

The Soils District shall include all land areas where:

(1) The characteristics of the surface soils to a depth of five (5) feet inhibit water percolation to the point that it is unacceptable to State and County health officials for use as septic effluent discharge, or allows surface water to stand for over twelve (12) hours.

(2) The characteristic of the soil and subsurface geology makes the soil inadequate as a bearing surface for standard building or road construction.

(3) The characteristic of the soil in combination with slope, water, wind, or other physical factors makes the soil unstable and subject to sliding, slipping, or water or wind erosion. (Ord. No. 164, August 17, 1972; Sec. 8-15.2, R.C.O. 1976)

Sec. 8-15.3 Requirements For Development Within A Soils District.

No Zoning, Building or Use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Soils District be permitted, unless the applicant establishes conformity with the requirements of this Article.

(1) Applications shall include soils and geologic reports by a soils engineer submitted to the Department of Public Works indicating the structure, drainage characteristics, and bearing capacities of the land to be developed. The report shall include a topographic

map of the parcel indicating existing or potential slip, slide, or highly erosive areas, and areas with poor surface drainage or inadequate percolation rates.

(2) The applicant shall demonstrate through detailed drawings that the development will not contribute to the instability of the land and that all structural proposals including roads and pavement have adequately compensated for soil characteristics.

(3) The applicant shall demonstrate through detailed drawings that the proposed development will eliminate the potential of casual standing water through positive drainage and that percolation rates are adequate for the type of development proposed.

(4) For the development of not more than one (1) dwelling unit, the Department of Public Works may waive any of the requirements of this Article provided that requirements of the State Health Department and County Building Code are met or exceeded. (Ord. No. 164, August 17, 1972; Sec. 8-15.3, R.C.O. 1976)

Sec. 8-15.4 Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Soils District under the criteria established in Section 8-15.2. (Ord. No. 164, August 17, 1972; Sec. 8-15.4, R.C.O. 1976)

ARTICLE 16. TSUNAMI DISTRICTS (S-TS)

Sec. 8-16.1 Purpose.

To minimize the threat to the public health and safety, and damage to property due to extraordinary ocean wave action. (Ord. No. 164, August 17, 1972; Sec. 8-16.1, R.C.O. 1976)

Sec. 8-16.2 Lands Included.

All lands subject to flood hazards caused by extraordinary ocean wave action, regardless of generating force, identified as coastal high hazard areas by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the County of Kauai", dated March 4, 1987, with accompanying Flood Insurance Rate Maps. (Ord. No. 164, August 17, 1972; Sec. 8-16.2, R.C.O. 1976; Ord. No. 416, October 28, 1981; Ord. No. 500, March 31, 1987)

Sec. 8-16.3 Requirements For Development In A Tsunami District.

No zoning, building, or use permit shall be issued for development of any portion of the Tsunami District unless

the applicant establishes conformity with the requirements of this Article.

(1) The following uses, structures, and developments shall not be permitted in the Tsunami District:

(A) Publicly-owned buildings intended for human occupancy other than park and recreational facilities.

(B) Schools, hospitals, nursing homes, or other buildings or development used primarily by children or physically or mentally infirm persons.

(2) The use, structure and development, if required, shall be subject to additional construction and development standards provided in Section 15-1, relating to Flood Plain Management.

(3) Applications shall delineate the boundaries of the Tsunami District, the coastal high hazard areas as shown on the flood maps, and designate the base flood elevations for the site. (Ord. No. 164, August 17, 1972; Sec. 8-16.3, R.C.O. 1976; Ord. No. 416, October 28, 1981)

Sec. 8-16.4 Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Tsunami District under the criteria of Section 8-16.2. (Ord. No. 164, August 17, 1972; Sec. 8-16.4, R.C.O. 1976; Ord. No. 416, October 28, 1981)

ARTICLE 17. TIME SHARING AND TRANSIENT VACATION RENTALS

Sec. 8-17.1 Limitations On Location.

Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited. (Ord. No. 436, September 22, 1982)

Sec. 8-17.2 Permitted Time Share Locations.

Subject to the limitations contained in Sections 8-17.4 and 8-17.5, time share units and time share plans are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In the Resort RR-10 and RR-20 Districts and multi-family R-10 and R-20 Residential Districts when such districts are located within the visitor destination areas of Poipu, Lihue, Wailua-Kapaa or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes.

(c) Time share units and time share plans are prohibited in the R-1, R-2, R-4 and R-6 Residential Districts.

(Ord. No. 436, September 22, 1982; Ord. No. PM-255-92, August 13, 1992)

Sec. 8-17.3. Permitted Locations for Transient Vacation Rentals.

Subject to the limitations contained in Section 8-17.5, transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In Resort Districts and Residential Districts when such districts are located within the visitor destination areas of Poipu, Lihue, Wailua-Kapaa or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps. (Ord. No. PM-255-92, August 13, 1992)

Sec. 8-17.4 Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts.

If the project in which the time share unit or time share plan is to be created contains an existing time share unit or time share plan, then time share units and plans shall be regulated according to the terms of the project instruments.

If the project in which the time share unit or time share plan is to be created is not a hotel and does not contain time share units or time share plans, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing. Provided, however, that time share units and time share plans permitted under this section shall be limited to the visitor destination areas described in Section 8-17.2, and to hotels in Resort or Commercial Districts. (Ord. No. 436, September 22, 1982; Ord. No. PM-255-92, August 13, 1992)

Sec. 8-17.5 Existing Uses.

(a) Existing Time Share Units, Time Share Plans and Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental, when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after the effective date of this section, nor shall the terms of the project instrument be amended or modified after the effective date of this section in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by

the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

(b) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section 8-17.4. (Ord. No. 436, September 22, 1982; Ord. No. PM-255-92, August 13, 1992)

Sec. 8-17.6 Penalty.

An owner of any unit which is operated in violation of this Article, together with any other person, firm, company, association, partnership or corporation violating any provision of this Article, shall each be fined not less than $500 nor more than $10,000 for each offense. If any person fails to remove such violation within one month, such person shall be subject to a new and separate violation for each day the violation continues to exist.

(a) Actions by County Attorney. The County Attorney may file a civil action to enjoin any violation of this Article and collect any penalties provided for by this Article.

(b) Disposition of Fines. All fines imposed for violations of this Article shall be paid to the Director of Finance to the credit of the Development Fund. (Ord. No. 436, September 22, 1982; Ord. No PM-255-92, August 13, 1992)

Sec. 8-17.7 Amendments To Visitor Destination Areas Designations.

Amendments to the location and/or boundaries of the Visitor Destination Areas shall be made in accordance with the amendment provisions of Article 22 of this Chapter 8, provided that the burden of proof rests with the applicant to show upon the clear preponderance of the evidence that the amendment is reasonable. The criteria for evaluating such proposed amendments shall be as follows:

(1) The proposed amendment is consistent with the General Plan and the Development Plan.

(2) The parcel or parcels to be affected by the proposed amendment are suitable for Visitor Destination Area uses.

(3) The availability of existing public services and facilities in the affected areas and whether the requested public services and facilities for the proposed change in use can be met without undue burden.

(4) The proposed change will conflict with other existing uses in the affected area.

(5) The proposed change will cause or result in unreasonable air, noise, or water pollution, or will adversely affect irreplaceable natural resources.

(6) The affected areas contain or are in close proximity to other areas that contain:

(A) Large numbers of hotel and/or multiple family dwelling units suitable as accommodations by temporary visitors.

(B) Lands designated for Resort Use on the General Plan or having Resort zoning.

(C) Outdoor or commercial recreational facilities, such as beaches, golf courses, tennis courts and other similar facilities.

(D) Tourist related commercial facilities, such as gift shops, food stores, recreational equipment and services shops, tour and transportation service terminals, restaurants, bars, night clubs, cabarets, shopping centers, theaters, auditoriums, and other similar facilities.

(7) The proposed change will include or adversely affect predominantly residential neighborhoods. (Ord. No. 436, September 22, 1982; Ord. No. PM-255-92, August 13, 1992)

ARTICLE 18. PROJECT DEVELOPMENT

Sec. 8-18.1 Purpose.

(a) To facilitate, by a use permit process, comprehensive site planning and design productive of optimum adaptation of development of significant land areas under the ownership of one (1) person or cooperatively joined for the purpose of development.

(b) To provide a process that will allow diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, lot sizes, and streets and utility systems in planning and designing use facilities while maintaining the intent of this Chapter.

(c) To assure, in proper cases, that the complete development of a parcel has been planned prior to the development or subdivision of any portion of the parcel so that public service, transport, and utility systems can be effectively anticipated and coordinated. (Ord. No. 164, August 17, 1972; Sec. 8-17.1, R.C.O. 1976)

Sec. 8-18.2 Lands That May Be Included In A Project Development.

(a) Any land area designated as Urban District by the State Land Use Commission may be developed in accordance with a use permit issued pursuant to this Article if the land area is under one (1) ownership or there is an agreement among several owners for the purposes of cooperative or joint development, and the land area is:

(1) in excess of one (1) acre in a Commercial, Resort, or Industrial Use District; or

(2) is large enough to qualify for more than ten (10) dwelling units in any Residential District, Open District, or Agriculture District. (Ord. No. 164, August 17, 1972; Sec. 8-17.2, R.C.O. 1976)

Sec. 8-18.3 Uses, Structures And Development Which May Be Permitted.

Any use, structure or development that is permitted in the Use District in which the land of the applicant is

located, and any other use, structure or development subordinate or in support of, those uses may be allowed if it is demonstrated that the subordinate or supportive use, structure or development is:

(1) compatible and complementary to the generally permitted uses and to public health, safety and welfare; and

(2) compatible and complementary to uses on lands adjacent to the project development site and to uses in the general vicinity; and will not create conditions that overload existing public transport systems, utility systems or other public facilities. (Ord. No. 164, August 17, 1972; Sec. 8-17.3, R.C.O. 1976)

Sec. 8-18.4 Requirements For Project Development Use Permits.

(a) The applicant shall submit drawings and plans comprising a general development plan covering the entire area of the parcel to contain the project development that show: uses, dimensions and locations of proposed structures; widths, alignments and improvements of proposed streets, pedestrian and drainage ways; how the property could be divided for individual parcel sale; parking areas; public uses; landscaping and open spaces; a schedule of development; architectural drawings demonstrating the design and character of the proposed buildings and uses; and any other information or plans deemed necessary by the Planning Director.

(b) The applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall demonstrate that the project development will be completed within the schedule furnished with the application.

(c) The applicant shall demonstrate, and the Planning Commission shall find, that the proposed project development substantially conforms to the intent of the General Plan.

(d) The Planning Commission shall find that the project development will create an environment of sustained desirability and stability, shall be compatible with the character of the surrounding neighborhood, and shall result in an intensity of land coverage and density of dwelling units no higher than are permitted in the Use District in which the project development is to be located. The Planning Commission may approve a project development containing residential uses, at a density higher than permitted in the District in which the project development is to be located, if the residences to be constructed will be leased or sold at prices that will make them available to persons of lower income. In that case, the applicant shall establish that the residential construction is being undertaken under a Federal or State subsidized housing

program designed to produce housing for lower income persons.

(e) A permit may not be granted for any commercial development which will create any substantial traffic congestion, will interfere with any projected public improvements, and which does not include adequate provisions for entrances and exists, internal traffic and parking, or will create adverse effects upon the adjacent and surrounding existing or prospective development.

(f) All industrial developments included in a project development shall be in conformity with performance standards established by the Department of Public Works, shall constitute an efficient and well organized development with adequate provisions for freight service and necessary storage, and will not create adverse effects upon adjacent and surrounding existing or prospective development.

(g) The applicant shall demonstrate and the Planning Commission shall find that the development is of a harmonious, integrated whole and that the contemplated arrangements or uses justify the application or regulations and requirements differing from those ordinarily applicable within the district where the project development is to be located. (Ord. No. 164, August 17, 1972; Sec. 8-17.4, R.C.O. 1976)

Sec. 8-18.5 Permits Required.

A project development may only be undertaken in accordance with a Class IV Zoning Permit. The permit may be issued by the Planning Commission if it determines that the requirements of this Article have been met even though the development thus permitted does not satisfy all the requirements applicable in the Use District in which the project development is to be located. (Ord. No. 164, August 17, 1972; Sec. 8-17.5, R.C.O. 1976)

Sec. 8-18.6 Joint Development Of Two Or More Abutting Lots.

(a) Application. This Section shall be applicable in all zoning districts.

(b) Joint Development; When Prohibited. A joint development is prohibited when the owner of abutting lots is the same person.

(c) Application For Joint Development. An applicant who desires a joint development over abutting lots without consolidating the lots may apply for a Use permit to undertake a joint development. For the purposes of this Section, in the event leasehold interests are involved, the minimum term of the leasehold interests remaining on a lease shall be for forty (40) years.

(d) Accompanying Documents.

(1) Together with the application for a Use permit the applicant shall submit a draft of an agreement describing the joint development and also a

plot plan showing the location of proposed improvements on the lots. The agreement shall contain a covenant of the owners or lessees to maintain the development in conformity with all zoning regulations and that any conflicting claims or differences among the owners, lessees or developers shall not affect the right of the County to enforce all zoning and other County regulations so long as the structures constructed under the agreement are in existence.

(2) In the event the proposed improvements are to be constructed over abutting lots, then the agreement shall contain provisions respecting the removal or continued use of the improvements at the termination of the agreement.

(3) The agreement shall contain a covenant that at the termination of the joint development agreement the uses and improvements within each lot shall be made to be in conformity with all requirements of the Comprehensive Zoning Ordinance.

(4) The covenants mentioned in this subsection shall be covenants which shall run with the land.

(e) Action on Application. If the Planning Commission finds that the joint development is reasonable, logical and consistent with the zoning regulations pertinent to the area, it may issue the Use permit subject to the condition that the agreement mentioned in subsection (d) of this Section be executed in final form, filed with the Planning Department and registered or recorded in the appropriate records office by the applicant. The owner's or lessee's agreement shall be subject to the approval of the County Attorney. No Building permit shall be issued until the Planning Director has certified to the Building Division that the required conditions have been satisfied. The Planning Commission may impose other conditions relating to the proposed development as may be consistent with the Comprehensive Zoning Ordinance. (Ord. No. 318, June 27, 1977; Sec. 8-17.6, 1978 Cumulative Supplement)

ARTICLE 19. ZONING PERMITS

Sec. 8-19.1 When Required.

No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit. (Ord. No. 164, August 17, 1972; Sec. 8-18.1, R.C.O. 1976)

Sec. 8-19.2 Applications.

The owner or lessee (holding under recorded lease the unexpired term of which is more than five (5) years from the date of filing the application), or any person duly authorized by the owner or lessee of the property affected, or any utility company possessing the power of eminent domain, may file a written application with the Planning Department for a zoning permit of the required type on a form prescribed by the Planning Department. The application shall contain or be accompanied by:

(1) A non-refundable filing and processing fee in the amount indicated in Section 8-19.3(a).

(2) A description of the property in sufficient detail to determine its precise location.

(3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:

(A) to show conformity with the standards established in this Chapter, and

(B) to a proper determination relative to the specific request.

(4) Any other plans and information required by the Planning Department. (Ord. No. 164, August 17, 1972; Sec. 8-18.2, R.C.O. 1976)

Sec. 8-19.3 Class I Zoning Permits.

(a) The filing and processing fee is Five Dollars ($5).

(b) The Planning Director or his designee shall check the application to determine whether the construction, development, activity or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.

(c) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.

(d) If the Planning Director or his designee fails to take action on a completed application within twenty-one (21) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(e) An applicant who is denied a Class I Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-19.7. (Ord. No. 164, August 17, 1972; Sec. 8-18.3, R.C.O. 1976)

Sec. 8-19.4 Class II Zoning Permits.

(a) The filing and processing fee is Ten Dollars ($10).

(b) The Planning Director or his designee shall check the application to determine whether the construction,

development, activity, use or plot plan conforms to the standards established by this Chapter and may

(1) refer the application to any County or State department for comment or approval and

(2) require additional information if necessary to make a determination.

(c) A Class II Zoning Permit shall be issued with or without conditions or denied by the Planning Director.

(d) If the Planning Director or his designee fail to take action on a completed application within thirty (30) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(e) An applicant who is denied a Class II Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-19.7. (Ord. No. 164, August 17, 1972; Sec. 8-18.4, R.C.O. 1976)

Sec. 8-19.5 Class III Zoning Permits.

(a) The filing and processing fee is Thirty Five Dollars ($35).

(b) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use, or plot plan conforms to the standards established by this Chapter and

(1) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(2) may require additional information if necessary to make a determination.

(c) Within forty-five (45) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The reports shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(d) The Planning Director may, within forty-five (45) days after the filing of a completed application, issue a provisional Class III Zoning Permit with or without conditions, or deny the permit, or determine that the application for the permit should be decided in the first instance by the Planning Commission.

(e) If the Planning Director issues a provisional Class III Zoning Permit, with or without conditions, he shall notify the members of the Planning Commission, and any persons who have duly requested such notice, of that action. The provisional permit shall become final unless within thirty (30) days at least three (3) members of the Planning Commission request review by the Planning Commission. In

that case, the Planning Commission shall determine whether or not to issue the permit.

(f) If the Planning Director refers the application to the Planning Commission or if three (3) members request Planning Commission review of a provisionally issued permit, the Planning Commission within sixty (60) days of the reference or request for review shall issue the permit with or without conditions or shall deny the permit.

(g) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(h) An applicant who is denied a Class III Zoning Permit by the Planning Director, or who disagrees with the conditions that have been imposed on its issuance by the Planning Director may appeal the decision to the Planning Commission in accordance with Section 8-19.7. (Ord. No. 164, August 17, 1972; Sec. 8-18.5, R.C.O. 1976)

Sec. 8-19.6 Class IV Zoning Permits.

(a) The filing and processing fee is One Hundred Fifty Dollars ($150), except where a Class IV Zoning Permit is only required because a Variance is necessary, in which case the fee is Fifty Dollars ($50).

(b) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and

(1) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(2) may require additional information if necessary to make a determination.

(c) Within sixty (60) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The report shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(d) Within sixty (60) days after the receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant, the Planning Commission shall hold at least one public hearing on the application and issue the permit with or without conditions or deny the permit. Notice of the proposed public hearing shall be given to the applicant and shall also be published at least once in a newspaper of general circulation in the County, at least twenty (20) days prior to the date of the hearing.

In proceedings involving use permits within the Residential, Agriculture and Open Districts and for all

Project Developments pursuant to Section 8-20.6, and for variances involving height limitations pursuant to Section 8-21.5, the following procedures shall apply in addition to the above paragraphs:

The applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards for at least eighty-five per cent (85%) of all parcels of real property within 300 feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

(1) date;
(2) time;
(3) location;
(4) purpose; and
(5) description or sketch of property involved.

At least seven (7) days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the applicant fail to submit the affidavit within the time required, the public hearing shall be postponed. In this case, the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The applicant shall be required to pay for the republication costs and shall follow the same notice requirements of this paragraph in the renotification of affected persons.

(e) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved. (Ord. No. 164, August 17, 1972; Sec. 8-18.6, R.C.O. 1976; Ord. No. 402, November 10, 1980; Ord. No. 506, September 21, 1987)

Sec. 8-19.7 Appeal.

An applicant who seeks to appeal from an adverse decision of the Planning Director or his designee shall file a notice of appeal with the Planning Director and the

Planning Commission within twenty-one (21) days after the adverse decision. If the appeal is from the denial of a Class III Zoning Permit, the Planning Director shall make the notice public and shall notify any persons who have duly requested notice of appeals. The Planning Commission shall consider the appeal within sixty (60) days of the filing of the notice at a public session and shall render its decision within that period. (Ord. No. 164, August 17, 1972; Sec. 8- 18.7, R.C.O. 1976)

ARTICLE 20. USE PERMITS

Sec. 8-20.1 Purpose.

The purpose of the "use permit" procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations in a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit such uses if the proper integration cannot be assured. (Ord. No. 164, August 17, 1972; Sec. 8-19.1, R.C.O. 1976)

Sec. 8-20.2 When Required.

No person shall undertake any construction or development, or carry on any activity or use for which a Use Permit is required by this Chapter, or obtain a building permit for construction, development, activity or use for which a Use Permit is required by this Chapter, without first obtaining a Use Permit. (Ord. No. 164, August 17, 1972; Sec. 8-19.2, R.C.O. 1976)

Sec. 8-20.3 Application.

An application for a Use Permit may be filed by any person authorized to file an application for a Zoning Permit under Section 8-19.2. The application, whenever feasible, shall be filed together with the application for the required zoning permit, and a single application shall be used for both permits in those cases. The application shall contain the information required by Section 8-19.2 and other information justifying the issuance of the Use Permit. (Ord. No. 164, August 17, 1972; Sec. 8-19.3, R.C.O. 1976)

Sec. 8-20.4 Fees.

There shall be no additional filing and processing fee for a Use Permit application filed in conjunction with an application for a Zoning Permit. In other cases, a non-refundable fee of Fifty Dollars ($50) shall accompany the application for the Use Permit. (Ord. No. 164, August 17, 1972; Sec. 8-19.4, R.C.O. 1976)

Sec. 8-20.5 Standards.

(a) A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

(b) The Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, its maintenance and operation, type and amount of traffic, off-street parking, condition and width of adjoining roads, access, nuisance values, appearance of the building, landscaping, yards, open areas and other matters deemed necessary by the Planning Commission. (Ord. No. 164, August 17, 1972; Sec. 8-19.6, R.C.O. (1976)

Sec. 8-20.6 Procedure.

(a) The procedures established in Section 8-19.5 for a Class III Zoning Permit shall be followed except:

All use permits for development or use in a Residential District, and all use permits for a Project Development, shall require a public hearing in accordance with the procedure specified for Class IV Zoning Permits.

(b) Upon findings of the Commission that a Use Permit may be granted consistent with the requirements of this Article, the permit shall be issued to the applicant on such terms and conditions and such a period of time, as the facts may warrant.

(c) Use Permits may be revoked by the Commission after due hearing if such action shall be necessary to effectuate the purpose of this Chapter. (Ord. No. 164, August 17, 1972; Sec. 8-19.6, R.C.O. 1976)

Sec. 8-20.7 Application Denials And Appeal.

When a Use Permit application is denied by the Planning Director and no appeal is taken, or is denied by the Planning Commission, an application for a Use Permit involving the same or substantially similar construction, development, activity or use may not be filed sooner than six (6) months following the denial. (Ord. No. 164, August 17, 1972; Sec. 8-19.7, R.C.O. 1976)

ARTICLE 21. VARIANCE

Sec. 8-21.1 Authority.

The Planning Commission may grant variances from the provisions of this Chapter only in particular cases as set forth in this Article. (Ord. No. 164, August 17, 1972; Sec. 8-20.1, R.C.O. 1976)

Sec. 8-21.2 Standards.

Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a variance. In no case may a variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the variance. (Ord. No. 164, August 17, 1972; Sec. 8- 20.2, R.C.O. 1976)

Sec. 8-21.3 Application.

An application for a Variance may be filed by any person authorized to file an application for a Zoning Permit under Section 8-19.2. The application, wherever feasible, shall be filed together with the application for the required Zoning Permit and a single application shall be used for both permits in those cases. The application shall contain the information required pursuant to Section 8-19.2 and other information justifying the issuance of the Variance. (Ord. No. 164, August 17, 1972; Sec. 8-20.3, R.C.O. 1976)

Sec. 8-21.4 Fees.

There shall be no additional filing and processing fee for a Variance application filed in conjunction with an application for a Zoning Permit. In other cases, a non-refundable fee of Fifty Dollars ($50) shall accompany the application for the Variance. (Ord. No. 164, August 17, 1972; Sec. 8-20.4, R.C.O. 1976)

Sec. 8-21.5 Procedure.

(a) The procedure established in Section 8-19.6 for a Class IV Zoning Permit shall be followed.

(b) Upon findings of the Planning Commission that a Variance may be granted consistent with the requirements of this Article, the Variance shall be issued to the applicant on such terms and conditions, and for such period of time, as the facts may warrant. The Planning Commission shall append conditions that achieve a substantial equivalent or alternative to the regulation from which the Variance is sought.

(c) When a Variance is denied by the Planning Commission, an application for a Variance involving the same or substantially similar construction, development, use or activity may not be filed sooner than six (6) months following the denial. (Ord. No. 164, August 17, 1972; Sec. 8-20.5, R.C.O. 1976)

ARTICLE 22. AMENDMENTS

Sec. 8-22.1 Amendments.

This Chapter may be amended by changing the boundaries of districts or by changing the text whenever the public necessity and convenience and the general welfare require an amendment. (Ord. No. 178, July 3, 1973; Sec. 8-21.1, R.C.O. 1976)

Sec. 8-22.2 Initiation.

The amendment may be initiated by the verified petition of one (1) or more owners of property affected by the proposed amendment, which petition shall be on a form prescribed by and filed with the Planning Commission and shall be accompanied by a processing fee of Fifty Dollars ($50).

(a) For the purpose of complying with this Section a property owner is to include the holder of a lease interest the expiration of which will occur more than five (5) years after the date of filing the petition.

(b) The petition shall contain or be accompanied by the following:

(1) a statement of the nature of the petitioner's interest;

(2) a draft of the substance of the proposed amendment;

(3) a specific statement of the reasons for granting the proposed change, and if requested by the Planning Director, supported by a written documented analysis of the district involved using all the pertinent elements upon which the Zoning is based;

(4) a map, drawn to scale, describing the property and showing its location in relation to

surrounding properties and to known landmarks or improvements. (Ord. No. 178, July 3, 1973; Sec. 8- 21.2, R.C.O. 1976)

Sec. 8-22.3 Public Hearings.

The Commission shall hold at least one (1) public hearing on any proposed amendment.

(a) Except for amendments relating to necessary governmental public utility developments and District Boundary change applications pending before the State Land Use Commission on or prior to July 3, 1973, all proposed amendments shall be considered for public hearing only during four (4) months per calendar year.

(1) Public hearings shall be conducted by the Planning Commission only during the months of January, April, July and October. At any public hearing, any number of petitions may be heard provided that each petition is heard separately.

(2) Petitions and resolutions received in an acceptable form by the Planning Commission not later than sixty (60) days prior to the public hearing date shall be considered by the Planning Commission and Council for review and action.

(b) At least fifteen (15) days prior to the public hearing, the Planning Commission shall give notice thereof to the petitioner and also by publishing at least once in a newspaper of general circulation published in the County the time, date and place of the hearing, its purpose and a description of any property which may be involved.

(c) In the case of a petition for the amendment of district boundaries, the petitioner, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five per cent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in form approved by the Planning Director:

(1) date;
(2) time;

(3) location;
(4) purpose;
(5) description or sketch of property involved; and
(6) explanation of amendment process with emphasis on forthcoming Council action.

At least seven (7) days prior to the hearing date, the petitioner shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the petitioner fail to submit the affidavit within the time required, the public hearing shall be postponed and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The petitioner shall be required to pay for the republication costs and shall follow the notice requirements of this paragraph in the renotification of affected persons.

(d) Where the zoning amendments are initiated by the Planning Commission or the Council, the public hearing notice requirements of paragraph (c) above shall apply, except that in the consideration of community development plans and updates, the requirements of paragraph (b), above, shall apply. (Ord. No. 178, July 3, 1973; Ord. No. 188, August 22, 1973; Ord. No. 194, October 17, 1973; Sec. 8- 21.3, R.C.O. 1976; Ord. No. 402, November 10, 1980; Ord. No. 506, September 21, 1987)

Sec. 8-22.4 Consideration.

In considering an amendment, the Planning Commission shall consider the purposes of the existing and proposed changes to the Zoning Ordinance. A change in the Zoning Map or text shall not be made unless the change will further the public necessity and convenience and the general welfare. (Ord. No. 178, July 3, 1973; Sec. 8-21.4, R.C.O. 1976)

Sec. 8-22.5 Report Filed With Council.

After the conclusion of the public hearing, the Planning Commission shall approve, approve with modifications or disapprove any proposed amendment and shall file a report with the Council and the petitioner of its findings and action taken. The report shall be filed within sixty (60) days after the public hearing, or within a longer period as may be agreed upon between the Planning Commission and the initiator of the action.

(a) Failure by the Planning Commission to report within the sixty (60) day period specified in this Section or within a period as may be agreed upon shall be an approval of the proposed amendment by the Planning Commission and shall be reported to the Council by the Planning Director. (Ord. No. 178, July 3, 1973; Sec. 8- 21.5, R.C.O. 1976)

Sec. 8-22.6 Approval Or Denial Of Proposal.

In the event that the Planning Commission approves the proposal, the Council shall act on the proposal as indicated in this Article. However, in the event the Planning Commission denies the proposal, its decision is final except that the petitioners within fifteen (15) days after notice of the action may in writing appeal the decision to the Council, in which case the Council shall hear the matter in the same manner as for an approval by the Planning Commission.

(1) Within forty-five (45) days of receipt of the report for approval, the Council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(2) Within forty-five (45) days of receipt of the appeal, the Council shall set the matter for public hearing and shall give notice thereof to the petitioner and also by one (1) publication in a newspaper of general circulation published within the County at least fifteen (15) days prior to a hearing. After the conclusion of the hearing, the council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable. (Ord. No. 178, July 3, 1973; Sec. 8-21.6, R.C.O. 1976)

Sec. 8-22.7 Enactment By Ordinance.

Enactment of the amendment shall be by ordinance. (Ord. No. 178, July 3, 1973; Sec. 8-21.7, R.C.O. 1976)

Sec. 8-22.8. Withdrawal.

With the consent of the Planning Commission, any petition for an amendment may be withdrawn upon the written application of the initiator. The Council or the Planning Commission, as the case may be, may, by motion abandon any proceedings for an amendment initiated by its own resolution of intention.

(1) The withdrawal or abandonment may be made only when the proceedings are before the body for consideration, and provided that any hearing of which public notice has been given shall be held. (Ord. No. 178, July 3, 1973; Sec. 8-21.8, R.C.O. 1976)

Sec. 8-22.9 Denial.

When an amendment initiated by petition is denied by the Planning Commission and no appeal is taken, or is denied by the Council, the amendment or a substantially similar amendment may not be initiated by petition sooner than one

(1) year following the denial. (Ord. No. 178, July 3, 1973; Sec. 8-21.9, R.C.O. 1976)

Sec. 8-22.10 Initiation By Council Or Planning Commission.

Nothing contained in this Chapter shall prohibit the Planning Commission or the Council from initiating zoning changes where the general public interest and welfare are involved. When the amendment is initiated by the Planning Commission or the Council, the public hearing on the amendment may be held at any time. (Ord. No. 178, July 3, 1973; Ord. No. 194, October 17, 1973; Sec. 8-21.10, R.C.O. 1976)

ARTICLE 23. NON-CONFORMING STRUCTURES AND USES

Sec. 8-23.1 Non-Conforming Buildings And Structures.

(a) Buildings and structures that do not conform to the regulations established by this Chapter and which lawfully existed prior to or on September 1, 1972 or any subsequent amendment may be maintained, transferred and sold, provided that the Planning Commission may, after hearing, order the termination of a non-conforming use that creates substantial danger to public health or safety.

(b) Any nonconforming structure, except as otherwise regulated, may be repaired, maintained, or altered in any manner which does not increase nonconformity. Any nonconforming structure, except as otherwise regulated, may be enlarged or expanded provided that any enlargement or addition shall conform to the regulations for the district in which is it located.

(c) A non-conforming building or structure that is damaged or destroyed may not be reconstructed other than in accordance with the provisions of this Chapter unless the cost of reconstruction does not exceed fifty per cent (50%) of the replacement cost of the building or structure prior to the damage having occurred. Where reconstruction is permissible, reconstruction shall be completed within one (1) year from the date of damage or destruction and the building as reconstructed shall have no greater floor area than it had prior to being damaged. Where reconstruction is prohibited, the remaining portion of the non-conforming building or structure shall be removed or brought into conformity with the requirements of this Chapter. The Department of Public Works shall determine the extent of damage to determine whether the building may be restored.

(d) Except as otherwise provided in this section, no nonconforming structure that is voluntarily razed or required to be razed by the owner thereof may thereafter be restored except in full conformity with the provisions of this chapter.

(e) Any business building located on a lot of less than six thousand (6,000) square feet in a business district may be rebuilt to its existing size subject to the condition that the front setback line shall be enforced and the building size decreased to provide for the setback.. (Ord. No. 164, August 17, 1972; Sec. 8-22.1, R.C.O. 1976; Ord. No. 790, August 26, 2002)

Sec. 8-23.2 Non-Conforming Uses.

(a) A non-conforming use of land, buildings, or other structures may continue to the extent that the use existed on the effective date of this Chapter (September 1, 1972) or any amendment hereto, as provided in this Section 8-23.2, provided that the Planning Commission may, after hearing, order the termination of a non-conforming use that creates substantial danger to public health or safety.

(b) If any non-conforming uses ceases for any reason for continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity with the provisions of this Chapter.

(c) If the non-conforming use is carried on in a non-conforming building or structure and the portion of the

building or structure within which non-conforming use is conducted is destroyed or damaged, the use may be resumed if restoration or reconstruction, as permitted by this Article, is completed within one (1) year from the date of the damage or destruction. If the building or structure may not be restored or reconstructed under the provisions of this Chapter, or if the building or structure was conforming, the non-conforming use may not be resumed and any use of the land or building thereafter shall be in full conformity with the provisions of this Chapter.

(d) Any building lawfully in existence and vacant prior to or on September 1, 1972 may within six (6) months thereafter, be occupied by the use for which it was manifestly designed or arranged. (Ord. No. 164, August 17, 1972; Sec. 8-22.2, R.C.O. 1976)

Section 8-23.3 Uses, Structures, And Lots For Which Permits Were Issued Prior To Adoption Or Subsequent Amendment Of This Ordinance.

(a) Variances. Any building or structure authorized under a valid variance still in force issued prior to September 1, 1972 may be constructed if substantial construction activities related to the building or structure carried out on the site have been commenced or are commenced within twelve (12) months after September 1, 1972.

(b) Lots. Lots that do not conform to the requirements of this Chapter may be treated as lots existing on September 1, 1972 if they are created by a subdivision of land:

(1) for which a final subdivision map was approved prior to September 1, 1972 if the map has been, or is recorded within one (1) year after September 1, 1972 or

(2) for which a preliminary subdivision map was approved prior to September 1, 1972 and a final map of the subdivision is approved and recorded within one (1) year after September 1, 1972.

(c) Permits. Any building or structure authorized under a valid variance still in force issued prior to any subsequent amendment to this Chapter may be constructed if substantial construction activities related to the building or structure carried out on the site have been commenced or are commenced within twelve (12) months after the date of the adoption of the amendment to this Chapter. (Ord. No. 164, August 17, 1972; Ord. No. 173, May 31, 1973; Sec. 8-22.3, R.C.O. 1976; Ord. No. 790, August 26, 2002)

ARTICLE 24. ENFORCEMENT, LEGAL PROCEDURES AND PENALTIES

Sec. 8-24.1 Enforcement, Legal Procedures And Penalties.

(a) All departments, officials, and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no such permits or licenses for

construction, development, uses, activities, subdivisions or other purposes which would be in conflict with the provisions of this Chapter; any such permits or licenses, if issued in conflict with the provisions of this Chapter shall be void.

(b) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions thereof.

(c) Any person convicted of violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Hundred Dollars ($500). After conviction, a separate offense is committed upon each day during or on which a violation occurs or continues.

(d) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinment thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(e) The remedies provided for in this Article shall be cumulative and not exclusive. (Ord. No. 164, August 17, 1972; Sec. 8-23.1, R.C.O. 1976)

ARTICLE 25. KAUAI HISTORIC PRESERVATION REVIEW COMMISSION

Sec. 8-25.1 Purpose.

This Article is adopted for the purpose of:

(a) Protecting, preserving, perpetuating, promoting, enhancing and developing the historic resources of the County of Kauai.

(b) Providing for the development and maintenance of a county-wide system to identify and inventory historic resources within the County of Kauai.

(c) Encouraging and assisting in the nomination of additional historic resources to the National and State Register.

(d) Promoting the goals and programs contained in the Kauai County General Plan, Chapter 7 (Ordinance No. 461),

relating to Historic, Archeologic and Cultural Resources and contained in Chapter 6E (Historic Preservation) of the Hawaii Revised Statutes.

(e) Promoting the heritage and use of historic resources by and for the residents and visitors of the County of Kauai for educational and recreational purposes.

(f) Stimulating pride in the historic resources of the County of Kauai.

(g) Retaining and enhancing those unique qualities which contribute to the character of a historic district in order to preserve property values, attract visitors and residents, and provide new business and commercial opportunities.

(h) Insuring and promoting the harmonious, orderly and efficient growth, development, use and/or improvement of historic resources.

(i) Assuring that the development of new structures and uses, and the alteration and improvement to old structures and uses, within a historic district are compatible with the existing character and style of the district, and create harmony in style, form, color, proportion, texture and material between buildings of historic design and those of more modern design.

(j) Promoting the formulation of policies and guidelines to allow existing historic resources within a historic district to be maintained, repaired, improved or replaced as they exist so as to retain their historic character while improving public health and safety.

(k) Providing for the promulgation of rules and regulations to implement the purpose of this Article. (Ord. No. 496, December 24, 1986)

Sec. 8-25.2 Kauai Historic Preservation Review Commission.

(a) The purpose of this Article shall be implemented by a commission to be known as the "Kauai Historic Preservation Review Commission."

(b) The HPR Commission shall consist of nine (9) members, eight (8) of whom shall be appointed by the Mayor and the Council as provided in Section 23.02(B)(2) of the County Charter, as amended. At least five (5) of the HPR Commissioners shall be professionals of special expertise or interest from five of the following disciplines: architecture; architectural history; archaeology; history; planning; or Hawaiian culture. The Mayor shall appoint four (4) members, with at least one being a professional in history, one in Hawaiian culture, and one in Planning. The Council shall appoint four (4) members with at least one being a professional in archaeology and one in architecture/architectural history. These professional representatives must meet the qualifications enumerated in 36 CFR Sec. 61, Appendix A. The disciplines of archaeology, architecture or architectural history, history and Hawaiian

culture must have professional representation on the HPR Commission, to the extent that such professionals are available in the County. In the event such expertise is not available within the County of Kauai, experts from within the State may be contacted to service the HPR Commission. When one (1) of these six (6) disciplines is not represented in the HPR Commission membership, the HPR Commission shall seek through appropriate means to acquire expertise in such missing area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline. In addition, to the extent possible, there shall be one (1) representative HPR Commissioner from each of the five (5) Planning Areas in the County of Kauai.

(c) The terms of the HPR Commissioners shall be staggered, with the initial appointments as follows:

(1) One year term: two (2) Mayor-appointed HPR Commissioners and two (2) Council-appointed HPR Commissioners.

(2) Two year term: two (2) Mayor-appointed HPR Commissioners and two (2) Council-appointed HPR Commissioners.

(3) Three year term: the HPR Commissioner appointed by the eight HPR Commissioners previously appointed by the Mayor and the Council.

Thereafter, the term of the office of the HPR Commissioners shall be three (3) years. No HPR Commissioner shall serve more than two (2) successive three-year terms. Should a vacancy arise prior to completion of the term, an appointment to fill such vacancy shall be made by the respective appointing authority only for the unexpired portion of the term.

(d) The Mayor shall designate one (1) of the members of the HPR Commission to serve as the initial Chairman, and one (1) to be the initial Vice-Chairman. Each shall serve for a period of one (1) year and thereafter the HPR Commission shall elect its own officers on a yearly basis. The Planning Director, or his designee, shall be responsible for administering the HPR Commission's historic preservation program, and shall serve as its liaison with the State Historic Preservation Office.

(e) The members shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties. (Ord. No. 496, December 24, 1986)

Sec. 8-25.3 Powers And Duties Of The HPR Commission.

In order to implement the purposes of this Article, the HPR Commission shall have the power to do any of the following:

(a) To adopt criteria, standards and procedures for the identification of historic resources, and to prepare a countywide inventory of such.

(b) To maintain a system for the survey and inventory of historic resources within the County, as provided in Sec. 7-3.7 of the Kauai General Plan.

(c) To review and recommend to the State Historic Preservation Officer those historic resources which should be for submittal to the Keeper of the National Register.

(d) To administer the Local Certified Government program of Federal Assistance for historic preservation within the County of Kauai.

(e) To prepare and implement a comprehensive Countywide Historic Preservation Planning Process, consistent and coordinated with the Statewide Comprehensive Historic Preservation Planning Process.

(f) To advise and assist Federal, State and County government agencies in carrying out their historic preservation responsibilities.

(g) To provide public information and education relating to the National, State and County historic preservation programs.

(h) To assist the Planning Commission to develop standards and guidelines applicable to uses of historic resources and uses proposed within historic districts or neighborhoods, and to otherwise advise the Planning Commission in all matters affecting historic resources.

(i) To obtain, within the limits of funds appropriated, the services of qualified persons and organizations to direct, advise and assist the Commission and to obtain the equipment, supplies and other materials necessary to its effective operation.

(j) To promulgate rules and regulations pursuant to Hawaii Revised Statutes Chapter 91 in order to carry out its function in accordance with provisions of this Article. (Ord. No. 496, December 24, 1986)

Sec. 8-25.4 Meetings.

(a) The HPR Commission shall meet as necessary, and at least once quarterly.

(b) Within fifteen (15) days of such meetings, the HPR Commission shall forward any comments or recommendations it may have concerning matters referred to it by the Planning Commission to that body for its consideration.

(c) The HPR Commission shall hold public hearings in accordance with Chapter 91 of the Hawaii Revised Statutes. (Ord. No. 496, December 24, 1986)

Sec. 8-25.5 Accounting And Funding.

(a) The primary source of funding shall be from the Federal Historic Preservation Grant award to be allotted annually each fiscal year.

(b) The HPR Commission shall adopt a yearly budget, which shall be administered by the Planning Department.

(c) The HPR Commission, through the Planning Department, shall have the right to receive public and private funds and to hold and spend such funds for the purpose of implementing this Article. Funds received from outside sources shall not replace appropriated governmental sources. Any and all funds received may be used to compensate the Planning Department for any services it may perform for the HPR Commission.

(d) Should the Federal Historic Preservation Grant program be terminated, the HPR Commission and this Article may be repealed by the County Council pursuant to proper procedure, unless substitute State or County funds can be secured to continue the program. (Ord. No. 496, December 24, 1986)

ARTICLE 26. ADDITIONAL DWELLING UNIT

Sec. 8-26.1 Additional Dwelling Unit On Other Than Residentially Zoned Lots.

(a) Additional Dwelling Unit. Notwithstanding other provisions to the contrary, for any lot where only one single-family residential dwelling or farm dwelling is a generally permitted use or is allowed through a use permit, one additional single-family residential dwelling unit (attached or detached) or farm dwelling may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-4(c), Hawaii Revised Statutes and the county's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-3.3(a)(2) shall be allowed. An existing guest house may be converted

into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standard and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kauai Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kauai County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form will be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(b) Expiration. Section 8-26.1(a) is hereby repealed December 31, 2006. No building permit shall be granted for an additional dwelling unit under this Section 8-26.1(a) after such repeal date.

(c) Upon expiration of Sec. 8-26.1(a), any additional dwelling unit built pursuant to a valid building permit obtained under Sec. 8-26.1(a) shall thereafter be considered a conforming structure and use, notwithstanding Article 23 of

the Comprehensive Zoning Ordinance relating to non-conforming structures and uses. (Ord. No. 551, March 8, 1989; Ord. No. 594, October 24, 1991; Ord. No. 644, December 14, 1993; Ord. No. 667, November 23, 1994; Ord. No. 692, July 18, 1995; Ord. No. 707, August 15, 1996; Ord. No. 729, November 27, 1998)

Sec. 8-26.2 Additional Dwelling Unit On Residentially Zoned Lots.

(a) Notwithstanding other provisions to the contrary, for any residentially-zoned lot where only one single-family residential dwelling is permitted, one additional single-family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-4(c), Hawaii Revised Statutes and the County's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially-zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-3.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kauai Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital

improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kauai County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form will be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot. (Ord. No. 430, August 17, 1982; Ord. No. 551, March 8, 1989; Ord. No. 667, November 23, 1994)

CHAPTER 9

SUBDIVISION ORDINANCE

(The purpose of this Chapter is to define standards and requirements for the subdivision of land that are consistent with the County General Plan and the Comprehensive Zoning Ordinance.)

ARTICLE 1. GENERAL PROVISIONS

Sec. 9-1.1 Title.

This Chapter shall be known as and may be cited and referred to as the "Subdivision Ordinance For The County of Kauai." It is adopted to implement the intent and purposes of the adopted General Plan. (Ord. No. 175, July 3, 1973; Sec. 9-1.1, R.C.O. 1976)

Sec. 9-1.2 Application.

This Chapter applies to all subdivisions or parts of subdivisions made of land within the County of Kauai and to the preparation and approval of preliminary subdivision maps, construction plans, final subdivision maps, and improvements and dedications related thereto. The provisions of this Chapter shall not be applicable to any proposed subdivision, the preliminary subdivision map of which was approved by the Planning Commission prior to July 3, 1973 so long as a final map of the subdivision is approved and recorded within one (1) year after the effective date of this Ordinance. All preliminary subdivision maps and construction plans pending with the Planning Commission without preliminary approval on July 3, 1973 shall comply with all the provisions of this Chapter except to the provisions of Section 9-2.3(c) Street Right of Ways. All right of ways and pavement width requirements of the pending maps and plans may follow standards applicable before July 3, 1973. (Ord. No. 175, July 3, 1973; Ord. No. 200, November 27, 1973; Sec. 9-1.2, R.C.O. 1976)

Sec. 9-1.3 Requirements.

This Chapter imposes certain requirements and procedures relating to the subdivision of land. Other related requirements and procedures concerning subdivisions are contained in the Comprehensive Zoning Ordinance. The requirements of both Chapters shall apply to any subdivision made after July 3, 1973. (Ord. No. 175, July 3, 1973; Sec. 9-1.3, R.C.O. 1976)

Sec. 9-1.4 Administration.

In administering and applying the provisions of this Chapter, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-1.4, R.C.O. 1976)

Sec. 9-1.5 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

(1) "Agricultural Subdivision" means the subdivision of agricultural land within the Agricultural District as designated in the Comprehensive Zoning Ordinance, which is used primarily for agricultural purposes.

(2) "Alley" means a public or permanent private way less than fifteen (15) feet wide for the use of pedestrians or vehicles which has been permanently reserved and which affords, or is designed or intended to afford the secondary means of access to abutting property.

(3) "Approval" means the final approval granted to a proposed subdivision where the actual division of land into smaller parcels is sought, provided that where construction of a building or buildings is proposed without further subdividing an existing parcel of land, the term "approval" shall refer to the issuance of the building permit.

(4) "Block" means land on one (1) side of a street lying between intersecting or intercepting streets, or between streets and any railroad right-of-way, unsubdivided acreage, or body of water.

(5) "Center Line" See "Street Center Line."

(6) "Collector Street" means any street within a subdivision or adjacent thereto, which because of its location with reference to other streets or other sources of traffic, carries or will carry traffic from minor streets to major streets or thoroughfares; and includes the principal entrance streets of residence developments and streets for circulation of traffic within developments.

(7) "Comprehensive Zoning Ordinance" means the Comprehensive Zoning Ordinance of the County of Kauai.

(8) "County Engineer" means the County Engineer of the Department of Public Works of the County of Kauai.

(9) "Dead-End Street" means a street designed to have one (1) end permanently closed and having a turning area at the closed end.

(10) "Dedication" means a conveyance of land in fee simple or in the case of utilities, the utility facilities.

(11) "Density" means the number of dwelling units allowed on a particular unit of land area.

(12) "Department of Health" means the Department of Health of the State of Hawaii.

(13) "Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

(14) "Easement" means an acquired privilege or right of use or enjoyment which an individual, firm, corporation, unit of government, or group of individuals has in the land of another.

(15) "Fair Market Value" means the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used.

(16) "Frontage" means that portion of a parcel of property which abuts on a road, street or highway.

(17) "General Plan" means the General Plan of the County of Kauai.

(18) "Lodging Unit" means a room or rooms connected together constituting an independent housekeeping unit for a family which does not contain any kitchen.

(19) "Lot" means a portion of land shown as a unit on an approved and recorded subdivision map..

(20) "Lot Area" means the total of the area, measured in a horizontal plane, within the lot boundary lines.

(21) "Lot Length" means the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

(22) "Lot Width" means the average horizontal distance between the side lot lines measured at right angles to the line followed in measuring the lot depth.

(23) "Major Street" means a traffic artery which serves or is to serve between various communities within a regional area of the County.

(24) "Major Thoroughfare" means a traffic artery which serves or is to serve as a major connector of regional areas of the County.

(25) "Manager" means the Manager and Chief Engineer of the Department of Water of the County of Kauai.

(26) "Minor Street" means any street primarily for access to abutting owners.

(27) "Parcel" means an area of contiguous land owned by a person.

(28) "Parks and Playgrounds" means areas primarily used for active or passive recreational purposes, but not including golf courses.

(29) "Parks and Playground Facilities" means facilities including site improvements, structures and equipment primarily used for parks and playgrounds.

(30) "Planning Commission" means the Planning Commission of the County of Kauai.

(31) "Planning Director" means the Director of the Planning Department of the County of Kauai.

(32) "Private Street" means any parcel of land or non-exclusive easement not owned by the County or State of Hawaii, nor offered for dedication to the public, and which is used, or intended to be used for vehicular access to a lot or parcel.

(33) "Property Line" means any property line bounding a lot as defined in this Section.

(34) "Provide Land In Perpetuity" means the conveyance of land, improvements, easements, streets and facilities or any interest therein, to the County for a definite use and purpose, which shall be a perpetual and everlasting easement or dedication in fee simple title ownership.

(35) "Residential" means any home, house or dwelling unit including apartments and hotels.

(36) "School" means an institution with an organized curriculum offering instruction to children in the grade range, kindergarten through twelve, or any portion thereof.

(37) "Setback Line" means a line parallel to any property line and at a distance therefrom equal to the required minimum dimension from that property line, and extending the full length of the property line.

(38) "Slope" means a natural or artificial incline, as a hillside or terrace usually expressed as a ratio or percentage.

(39) "Street" or "Highway" means a way or place of whatever nature, open to the public for purposes of vehicular travel.

(40) "Street Center Line" means the center line of a street as established by official surveys or a recorded subdivision map. If not so established, the center line is mid-way between the right-of-way lines bounding the street.

(41) "Street Right-of-Way Line" means the boundary line right-of-way or easement and abutting property.

(42) "Subdivider" means any person who divides land as specified under the definition of subdivision or who constructs a building or group of buildings containing or divided into two (2) or more dwelling units or lodging units.

(43) "Subdivision" means the division of land or the consolidation and resubdivision into two (2) or more lots or parcels for the purpose of transfer, sale, lease, or building development, and when appropriate to the context shall relate to the process of dividing land. The term also includes a building or group of buildings, other than hotel containing or divided into two (2) or more dwelling units or lodging units.

(44) "Use Districts," "Special Treatment Districts," or "Constraint District" means those Districts contained in the Comprehensive Zoning Ordinance unless specifically referenced to the State Land Use Commission designations of Land Use Districts.

(45) "Used" means and includes "designed," "Intended," or "arranged to be used."

(46) "Utility Line" means the conduit, wire or pipe employed to conduct water, sewage, gas, electricity or other commodity from the source tank or facility for reduction of pressure, fire protection, or voltage or distribution. (Ord. No. 175, July 3, 1973; Ord. No. 271, December 22, 1975; Sec. 9-1.5, R.C.O. 1976)

ARTICLE 2. REQUIREMENTS AND STANDARDS FOR SUBDIVISIONS

Sec. 9-2.1 General Environmental Standards.

(a) Appearance.

(1) Subdivisions shall be planned, designed and constructed to preserve the natural environment and scenic beauty of the County.

(2) Specific consideration shall be given to preservation of natural topography such as drainage swales, rock out-croppings, slopes, areas of natural beauty particularly areas of scenic or environmental importance or value and areas of historic or scientific interest; to preservation of existing flora and fauna; to retention of major land forms, and to preservation of important vistas.

(3) Subdivisions shall be planned, designed and constructed to provide optimum open space to create man-made environment for use or occupance compatible and harmonious with the natural environment. (Ord. No. 175, July 3, 1973; Sec. 9-2.1, R.C.O. 1976)

Sec. 9-2.2 Land Alteration.

(a) Site.

(1) Subdivisions shall be planned, designed and constructed to require the minimum feasible amounts of

land coverage, and the minimum feasible disturbance of soil and site by grading, excavation and other land alteration.

(2) Subdivisions shall be planned, designed and constructed to avoid probabilities of:

(A) erosion;

(B) pollution, contamination or siltation of rivers, streams or ocean waters;

(C) damage to vegetation; and

(D) injury to wildlife and fish habitats.

(3) All land alteration, including grading, filling, and excavating done in connection with any subdivision shall be in accordance with the requirements of the Sediment and Erosion Control Ordinance and the Constraint Districts of the Comprehensive Zoning Ordinance, and standards and regulations established by the Department of Public Works.

Preliminary subdivision map approval, final subdivision map approval, and extensions of time to obtain final subdivision map approval shall not be granted when the applicant has outstanding violations of the Sediment and Erosion Control Ordinance adopted on October 8, 2003, and as amended.

If preliminary subdivision map approval was obtained by the applicant before the grading violation arose, the preliminary approval shall be automatically suspended.

Upon notification from the Department of Public Works that a grading violation has occurred on a parcel that is before the Planning Commission for preliminary subdivision map approval, final subdivision map approval, or extension of time in which to obtain final subdivision approval, the processing of the subdivision application shall be suspended until the grading violation is resolved. At such time, the applicant and reviewing agencies will be notified that the subdivision application has been suspended and that no further action shall be taken until the subdivider resolves the grading violation with the Department of Public Works.

Upon resolution of the grading violation, the subdivision application will continue on the same time line as it was on prior to the grading violation.

(b) Lots.

(1) The dimensions, shape and orientation of all lots shall be consistent with the requirements of the Comprehensive Zoning Ordinance and shall be determined with maximum regard to all natural terrain features, provision of open space, topography, landscaping, road access, off-street parking, circulation, design objectives, recreational potential, plotage advantages, and other relevant features including orientation to prevailing winds, relation of masses of structures to be

erected, spaces between future buildings, light and air, setback variations, shadow patterns, and design elements intended to create identity and interest in the development.

(2) All building sites should relate useable and open areas suitable to the character and type of buildings contemplated, and to the various requirements of land use with maximum regard to minimum disturbance of the natural grade.

(3) The creation of building sites through mass pad grading and successive padding or terracing of building sites is prohibited in the Slope District as defined in the Comprehensive Zoning Ordinance and may not be permitted in other areas where a reasonable alternative exists.

(4) Buildings, structures, and other improvements or land alterations shall not be located within any Flood District or Drainage District as established in the Comprehensive Zoning Ordinance, except as provided in the regulations regarding those Districts. (Ord. No. 175, July 3, 1973; Sec. 9-2.2, R.C.O. 1976; Ord. No. 815, April 6, 2004)

Sec. 9-2.3 Streets.

(a) General Standards for Streets. The location and alignment of streets within the subdivision shall conform to the County General Plan and Development Plans proposed by the Planning Commission and adopted by the Council.

(1) All streets shall be designed so as to:

(A) preserve natural features and topography and minimize need for protection of the natural environment;

(B) protect public health and safety;

(C) require adequate right-of-ways to serve the type and intensity of proposed land used within the subdivision, future traffic demand calculated according to vehicle type and anticipated volume, adequate access for public service vehicles, and adequate parking;

(D) require the creation of the minimum feasible amounts of land coverage and the minimum feasible disturbance to the soil;

(E) provide to the extent feasible for the separation of motor vehicular and pedestrian traffic;

(F) create conditions of proper drainage; and

(G) provide for proper landscaping.

(2) The street pattern in a subdivision shall make provision for the adjacent area, whether these streets are existing or proposed. Streets that are continuous shall bear the same name throughout their length.

(3) Where the preliminary subdivision map covers only a part of the subdivider's tract, a sketch of the future street system of the un-subdivided part shall be submitted.

(4) Where a tract is subdivided into parcels large enough for future resubdivision, the applicant shall show an arrangement of lots and streets that will permit later resubdivision in conformity with the street requirements of this Chapter.

(5) Cross type street intersections, intersections located on the inside of curves and intersections near crest vertical curves shall be avoided wherever possible.

(b) Reserve Strip and Access.

(1) There shall be no reserve strips controlling access to streets either existing or proposed, except where the control of strips is placed in the jurisdiction of the County. The subdividing of the land shall be such as to provide each lot, by means of either a public or private street of approved width, with satisfactory access to an existing public street.

(2) Whenever avoidable, no access to individual lots or parcels in a new residential subdivision shall be permitted from a major thoroughfare or a major street.

(3) Driveway access from collector streets within a residential subdivision may be limited as deemed necessary by the Planning Director.

(4) Driveway access from minor and dead-end streets shall be unlimited when consistent with other requirements of this Chapter and the Comprehensive Zoning Ordinance.

(5) The number of street intersections shall be kept to a minimum on major thoroughfares and streets and collector streets, consistent with the desirable block lengths or design factors.

(c) Street Right-of-Ways.

(1) The minimum street right-of-ways shall conform to the following requirements:

CLASSIFICATION	**RIGHT-OF-WAY**
Major Thoroughfare	undivided 80′
	divided 88′
Major Street	60′
Collector Street	56′
Minor Street	44′
Dead-End Street	40′

(2) Dead-End streets exceeding six hundred (600) feet in length shall be increased in width as required by the Planning Commission.

(3) A dead-end (cul-de-sac) street shall not be considered as a cul-de-sac when the end of the street is terminated at the property line adjacent to another property owner who may subdivide the adjacent property. In that case, this street shall be classified as a minor street, except when a proposed future subdivision will provide a connection between two (2) major streets, then the street shall be classified as a collector street. The street may also be classified as a collector street when a proposed future subdivision will provide a connection between two (2) collector streets.

(4) The minimum street right-of-way for agricultural subdivisions shall be forty-four (44) feet in width provided, that when the street length exceeds two thousand (2,000) feet, the minimum right-of-way shall be fifty-six (56) feet in width.

(5) The minimum street right-of-way for dead-end streets serving six (6) lots or less, excluding those lots also bounded by a public street, and not exceeding four hundred (400) feet in length, may be thirty (30) feet in width. This subsection shall apply only to

subdivisions of lots of record existing prior to or on July 3, 1973.

(d) Private Streets. All private streets shall conform to the requirements of the public streets.

(e) Improvements.

(1) All public and private streets, common driveways and parking areas shall be provided with all-weather surfaces.

(2) Pavement widths for the various classifications of streets shall conform to the standards established by the Department of Public Works.

(3) Curbs, gutters and sidewalks shall be provided on all proposed or existing streets within or abutting the subdivision in Commercial and Resort Districts and in Residential Districts where the density permitted is ten (10) units or more per acre.

(4) Street monuments shall be placed and properly coordinated with the government survey triangulation stations at all angle points, points of curvature in streets and at intermediate points as shall be required by the Department of Public Works.

(5) All traffic signs, street name signs and traffic stripes shall be provided by the subdivider as required by the Department of Public Works.

(6) All street design and improvements shall be constructed in accordance with the standards established by the Department of Public Works.

(f) Improving Existing Streets for Access.

(1) The Planning Commission may deny any subdivision if a traffic problem would be created due to the inadequacy of existing public streets to handle vehicles entering public streets. In denying a subdivision, the Planning Commission shall prepare a statement specifying the traffic problem presented by the subdivision. The subdivider shall have the right to make all necessary improvements to eliminate the problem at his own expense. Only upon completion of the required improvements, or upon executing an agreement with the County to provide improvements, may the Planning Commission approve the subdivision.

(2) In the event the Planning Commission determines that the existing street right-of-way width abutting a proposed subdivision is less than the width necessary for a street of the proper classification, the Planning Commission may require the subdivider to dedicate additional right-of-way to the County.

(g) Street Names.

(1) Authority to Name Streets. The authority to name streets and to approve the change of street names within the County of Kauai is hereby delegated to the Planning Department to be exercised in accordance with the standards as set forth herein.

(2) Definitions. When used in this subsection, the following words or phrases shall have the meaning given in this paragraph unless it shall be apparent from the context that a different meaning is intended:

(A) "Avenue" means a fully improved through-roadway serving local or minor collector traffic, landscaped and planted with trees.

(B) "Boulevard" means a major collector with or without a medial strip generally shorter than a highway, usually serving through-traffic on a continuous route.

(C) "Circle" means a roadway having a circular form with only one access point to the adjoining street.

(D) "Court" means a short roadway partially or wholly enclosed by buildings giving the impression of a small open square.

(E) "Drive" means a long winding collector roadway; usually through a valley, mountainous area or plateau, having scenic qualities.

(F) "Highway" means a roadway generally serving through traffic on a continuous route providing the primary access between communities. Whenever practicable, highways shall be named after Hawaiian royalty.

(G) "Lane" means a narrow and short roadway without curbs or sidewalks.

(H) "Loop" means a looped roadway having two (2) access points off the same roadway.

(I) "Mall" means a street or portions thereof on which vehicular traffic is to be restricted in whole or in part and which is to be used exclusively or primarily for pedestrian travel or promenade.

(J) "Parkway" means a major collector roadway usually containing a medial strip with landscaped setback parklike areas on each side of the right-of-way, generally heavily planted with trees for its entire length.

(K) "Place" means a cul-de-sac.

(L) "Road" means a collector roadway in the rural district. A roadway with the characteristics of a "road" or a "lane" shall be given a name only in circumstances where such a roadway is an extension of an already existing and named "road" or "lane."

(M) "Street" means the entire width between boundary lines of every roadway publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

(N) "Way" means a cul-de-sac which is off another cul-de-sac.

(3) Requirements Relative to Street Names. Street names within the County of Kauai shall comply with the following requirements:

(A) Street names selected shall consist of Hawaiian names, words or phrases, along with their proper spelling, meanings, and diacritical marks, and shall be selected with a view to the appropriateness of the name to historic, cultural, scenic and topographical features of the area; however, non-Hawaiian names may be selected based on justifications presented by the applicant.

(B) Street names selected shall not duplicate nor be similar to existing street names in spelling or sound.

(C) Street names selected shall fit the space limitation of a standard street name sign of the Department of Public Works.

(D) Streets that are a continuation of an existing street shall be given the same name as the existing street.

(E) Streets that are continuous shall bear the same name throughout.

(F) A street shall be entitled to a street name only if:

(i) The roadway has a legally defined right-of-way, by roadway lot or easement; however, street names shall be considered for subdivisions for which construction plans have been approved by the County;

(ii) The roadway serves two (2) or more lots or units.

(G) Any street names adopted after the effective date of this subsection shall include appropriate diacritical marks, which shall appear on the street name sign prepared by the Department of Public Works. Appropriate diacritical marks shall also be required for all replacement signs for street names in effect on the effective date of this subsection and to all signs where a newly named street constitutes an extension of a street for which a name is in effect on the effective date of this subsection. The Planning Department and the Department of Public Works may take all steps necessary to redesignate the names of existing streets to include appropriate diacritical marks where such redesignation is found to be necessary or appropriate.

(4) Procedural Requirements.

(A) Any owner, including public agencies, of a street or lot fronting a street, may request a new street name or a change of an existing street

name by submitting an application to the Planning Department.

(B) Street name applications shall include the following:

(i) A map showing the street for which a name or name change is sought and the surrounding streets and their names.

(ii) The street name proposed, and its meaning in English. The applicant may request the Planning Department to choose the name.

(iii) In the case of a request to name a street or to change an existing street name, other than as part of the subdivision process, the reasons for the proposed name or name change.

(iv) The names and addresses of all residents fronting the street.

(C) Notices that a street name or name change has been proposed shall be circulated by the applicant to all residents on the street.

(D) The Planning Director's approval of a name or name change shall be subject to the approval of a majority of the residents on the street.

(E) The applicant shall conduct a poll to determine the approval of residents on the street.

(5) Approval.

(A) The Planning Director shall approve or disapprove an application not later than forty five (45) days after its filing.

(B) The decision of the Planning Director may be appealed to the County Council not later than ten (10) days after mailing of the Planning Director's decision to the applicant.

(C) A street name shall become effective on the date of its approval.

(D) Upon approval of the street name, the applicant may install street name signs for the naming of the streets. The sign shall conform to the standards of the Department of Public Works. The applicant may also bear the total cost of the purchase and installation of the sign and shall notify the Fire Department, Police Department and Post Office of such change. The County will otherwise install street signs at the discretion of the County Engineer based on prioritization of the request and the availability of funds.

(h) Bus Stops and Bus Shelters.

(1) Dedication. Every subdivider seeking subdivision approval for residential units, as a condition precedent to approval of the residential subdivision, may be required to provide land in perpetuity or dedicate land for bus stops with adequate exits or turnaround routes and to construct and assume all costs for the materials and construction of bus shelters thereon.

(2) Location and Design. The location of bus stops and design of bus shelters, including materials to be used, shall conform to the standards established by the appropriate agencies.

(3) Procedure. The Planning Director, after consulting with the Department of Accounting and General Services, the Department of Education, and the Department of Public Works, and in consideration of the nature, location, and size of the subdivision, the existing bus stops, the traffic circulation pattern, the distance to school, the climatic conditions, and other health, safety, and welfare reasons, may recommend to the Planning Commission that the subdivider of a residential subdivision be required to dedicate land for bus stops with adequate exits or turnaround routes and to construct and assume all costs for the materials and construction of bus shelters thereon. The improvement of the land dedicated for the bus stop and the construction of the bus shelter, if required, shall be completed prior to its acceptance by the County.

(4) The Planning Director may adopt rules and regulations pursuant to Chapter 91, H.R.S., necessary for the purposes of this section. (Ord. No. 175, July 3, 1973; Ord. No. 270, December 24, 1975; Sec. 9-2.3, R.C.O. 1976; Ord. No. 331, October 26, 1977; Sec. 9-2.3, 1978 Cumulative Supplement; Ord. No. 356, January 26, 1979; Ord. No. 373, October 9, 1979; Ord. No. 406, January 22, 1981; Ord. No. 701, February 27, 1996)

Sec. 9-2.4 Water Supply And Distribution.

Water supply and distribution facilities shall conform to the rules and the construction standards of the Department of Water. (Ord. No. 175, July 3, 1973; Sec. 9-2.4, R.C.O. 1976)

Sec. 9-2.5 Sanitary Sewers.

(a) Sewage Service.

(1) All subdivisions accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with the standards established by the Department of Public Works.

(2) In subdivisions not accessible to public sewers, a private sewage disposal system that meets the requirements of the Department of Public Works and the requirements of the State and the State Department of Health may be permitted.

(b) Relation to Storm Drainage System. No storm drainage channel, line or facility shall be connected to a sanitary sewage system. (Ord. No. 175, July 3, 1973; Ord. No. 270, December 4, 1975; Sec. 9-2.5, R.C.O. 1976)

Sec. 9-2.6 Storm Drainage.

(a) General Standards for Drainage.

(1) Protect and preserve existing natural drainage channels to the greatest extent feasible.

(2) Protect the subdivision from flood hazards.

(3) Provide a system by which water within the subdivision will be removed without causing damage or harm to the natural environment, or to property or persons within the subdivision or to adjoining areas.

(4) Assure that waters drained from the subdivision are substantially free of pollutants, including sedimentary materials, of any greater quantity than would occur in the absence of subdivision and improvement, in order to protect the water courses and shorelines.

(5) Assure that waters are drained from the subdivision in a manner that they will not cause erosion outside of the subdivision to any greater extent than would occur in the absence of subdivision and improvement, in order to protect the water courses and shorelines.

(6) Provide for the crossing of water courses by spanning rather than by culverts when possible, so that natural stream beds will not be altered where the alterations will cause undue environmental change.

(b) Easements and Right-of-Ways. In the event drainage improvements are made for a subdivision, adequate right-of-ways and easements for storm drainage purposes shall be provided.

(c) Oversize Drainage Facilities. The Department of Public Works may require that the applicant design and construct a drainage system that will serve adequately the entire drainage basin within which the subdivision is located when the basin is ultimately developed. (Ord. No. 175, July 3, 1973; Ord. No. 300, March 7, 1977; Ord. No. 416, November 4, 1981; Sec. 9-2.6, R.C.O. 1976)

Sec. 9-2.7 Utility Lines And Facilities.

(a) Electric and Other Utility Lines and Communication.

(1) Electrical service shall be provided for all subdivisions, provided that the subdivisions within the

Agricultural and Open Use Districts outside of the Urban District as established by the State Land Use Commission may be exempted from this requirement if the subdivision used is to be primarily for agricultural purposes.

(2) Electric distribution lines and other utility and communication distribution lines shall be permitted overhead except as provided in this Section.

(3) All electrical services, street light wiring, and other utility and communications services shall be installed underground for all subdivisions within the Resort Districts and for residential subdivisions where the density of development is to be at ten (10) dwelling units or more per acre. The following types of lines and facilities may be exempted from the requirements of this Section:

(A) Poles without overhead lines used exclusively for fire or police alarm boxes, lighting purposes or traffic control, and equipment appurtenant to underground facilities.

(4) Street lights shall be provided within the subdivision of Commercial, R-2, R-4, R-6, R-10, R-20, RR-10 and RR-20 Use Districts. The construction of street lights shall conform to the standards established by the Department of Public Works.

(5) All new electric and other utility and communication services and facilities to be located within flood plain areas as determined by the County in subdivisions and new developments will be located and constructed in a manner which will minimize the risk and danger of flood damage. (Ord. No. 175, July 3, 1973; Ord. No. 300, March 7, 1977; Sec. 9-2.7, R.C.O. 1976; Sec. 9-2.7, 1978 Cumulative Supplement)

Sec. 9-2.8 Parks And Playgrounds.

(a) Authority. This Section is enacted pursuant to the authority granted by Section 46-6, H.R.S. as amended.

(b) Dedication. Every subdivider as a condition precedent to approval of a subdivision shall provide land in perpetuity or dedicate land for park and playground purposes, unless the Department of Public Works determines that it is unfeasible for the County to maintain such land for park and playground use. Where the Department of Public Works determines that it is unfeasible for the County to maintain such land for park and playground use, the Planning Commission shall require the subdivider to pay a fee in lieu of the land. Such fee shall be determined by the formula contained in Section 9-2.8(d). The park and playground requirement may be satisfied by a combination of land and fee in lieu of the land.

(c) Application.

(1) The provisions of this Section shall not apply to:

(A) Subdivision of land into two (2) or more lots only for the purpose of clarifying public records or adjustments of boundaries, provided that no additional lots will be developed for the purpose of building dwelling units thereon.

(B) Subdivisions for a public utility, public facility or of a public nature, and which will not be provided with or developed into dwelling units.

(C) Industrial and commercial use subdivisions.

(D) Subdivision of land into two (2) or more lots for agricultural purposes which will not be developed under this subdivision application, into dwelling or lodging units. The subdivider desiring such an exception shall file with the Planning Director a certified statement therefor, stating fully the grounds for the exception and that the subdivided land shall not be provided with dwelling or lodging units. These conditions shall run with the land.

(E) Subdivision of building, as defined in Section 9-1.5 of the Subdivision Ordinance, for which a Zoning Permit has been given in accordance with the provisions of the Comprehensive Zoning Ordinance, provided that a Building permit is secured within twelve (12) months from May 20, 1977.

(2) The Provisions of this Section shall apply to:

(A) Changes in use of building from hotel to residential dwelling use.

(B) Any additional dwelling or lodging units added to an existing building or lot.

(C) Any dwelling or lodging units of a building constructed in the stead of a building that is demolished, but only to the extent that such units exceed the number of units of the demolished building.

(D) All subdivisions except those excluded in Section 9-2.8(c)(1).

(E) Where zoning allows the construction of more than one (1) dwelling unit on a vacant lot, a fee as provided in Section 9-2.8(d) shall be assessed for all but one (1) dwelling unit at the time of Building permit action.

(d) Land Area Requirement to be Dedicated in Perpetuity.

(1) In the public interest, convenience, health, welfare and safety, subdividers, except as provided under Section 9-2.8(d)(4), shall provide a minimum ratio of one-and-three-fourths (1.75) acres of land for park and playground purposes for each one thousand (1,000) persons or fraction thereof.

(2) Population density for the purpose of this Section shall be:

(A) Single-family dwelling units and duplexes = 3.5 persons per dwelling unit; and

(B) Multi-family dwelling units = 2.1 persons per dwelling unit.

(3) Land required to be dedicated or provided in perpetuity by a subdivider pursuant to this Section shall be determined on the following basis:

(A) In subdivision of land, the basis for determining the total number of dwelling or lodging units for computation purposes shall be the number of such units permitted by the County in the subdivision as shown on the final subdivision map filed with the County.

(B) In Building permit applications, the total number of dwelling or lodging units for computation purposes shall be the total number of units as shown on the Building permit application.

(C) Land Dedication Formula. The land dedication formula shall be as follows:

C x P = AREA TO BE DEDICATED IN ACRES*

Where,

$C = \frac{1.75 \text{ ac}}{1000}$ = Number of Park Acres Per 1000 Persons as Per Section 9-2.8(d)(1) which is determined by the following formula:

P = [Population Density**] x [Total Number of Lots or Dwelling Units]

P = Total Population Within the Subdivision or Dwelling Units

*To convert acres to square feet, multiply acres by 43,560.

**Population density as per Section 9-2.8(d)(2).

(4) Land and building subdivisions of the first six (6) lots or units of subdivision of land or units falling within the provisions of Section 9-2.8(c) shall be assessed One Hundred Fifty Dollars ($150) per lot or unit. Subdivision of all lots or units subsequent to the initial six (6) shall be assessed the full requirement applicable to the lots or units as provided in Section 9-2.8(d), regardless of the change in ownership of the lot or unit assessed since the initial assessment.

(e) Valuation.

(1) When an in lieu fee is to be paid for lands, the assessment shall be based upon the fair market value of the raw land prior to subdivision plus fifty percent (50%) of the difference between the fair market value of the subdivided land (including site improvements and utilities), and the fair market value of the raw land.

(2) If the County and the subdivider fail to agree on the fair market value of the land, the value shall be fixed and established by majority vote of three (3) land appraisers; one (1) shall be appointed by the subdivider, one (1) shall be appointed by the County, and the third appointed by the Fifth Circuit Court. The subdivider and the County shall equally bear the fees of appraisal and costs thereof.

(3) Fees paid pursuant to this Section shall be made directly to the Director of Finance and said fees shall be deposited in a 'park and recreational trust fund.' Payment may be in a lump sum at the time of final approval of the land subdivision or final plan approval for a building subdivision; or fifty percent (50%) at the time of preliminary approval of the land subdivision or preliminary plan approval of the building subdivision, and the balance paid at the time of final approval of the land subdivision or final plan approval of the building subdivision.

(A) All monies received shall be used for the acquisition and development of park and recreational facilities, facilities replacement and maintenance equipment to serve the district in which the subdivision is located. Monies received may be expended on neighborhood community facilities in reasonable proximity to the subdivision. Where a public park and playground presently serves a subdivision, such fees may be used for the purpose of providing additional facilities for that park or playground. The County Engineer shall determine the various park areas for funding purposes.

(B) When funds are needed for implementing a plan to provide or develop land and facilities or

for preparing site plans such as design and engineering work, the County Engineer shall submit a written request to the Planning Director and the Mayor for approval. Upon approval, the Finance Director shall be authorized to release monies from the fund.

(C) No refunds shall be made for any land and building subdivision which the Planning Commission has granted final approval, except that credit may be given to subsequent subdivisions of the same area.

(D) All monies, interests, and other forms of earnings resulting from the fee shall thereafter be the property of the County. The interests and earnings accrued from the fee shall be expended in the same manner as the fee itself.

(f) Credit for Private Park and Playground.

(1) Where land for a private park, playground or recreational area is provided in a subdivision, and the area is to be privately owned and maintained and used by the occupants in the subdivision, such land may be credited on an area for area basis against the land which would otherwise be required to be dedicated under Section 9-2.8(d); provided that, such credit shall not exceed fifty percent (50%) of the land that would otherwise be required to be dedicated under Section 9-2.8(d).

(2) The credit shall be subject to the following standards and requirements and subject to the approval of the Planning Commission upon consultation with the Department of Public Works.

(A) The park, playground or recreational area shall be clearly set aside as a recreational area.

(B) No credit shall be given for setback areas which are required by other State and County statutes, ordinances, and regulations.

(C) The use of the site is restricted for park, playground and recreational purposes by recorded covenants which shall run with the land for the use of all the purchasers or occupants in the subdivision. The covenant shall specify that the restricted use cannot be altered without the consent of the Planning Commission. The covenants shall also obligate all of the occupants of the subdivision to be mandatory members of the private park, playground or recreational area.

(D) There shall be adequate assurance for perpetual maintenance of the private parks and playgrounds by recorded covenant running with the land which shall include but not necessarily be limited to the following:

(i) Provisions obligating the subdividers, purchasers or occupants in the subdivision to maintain the private parks and playgrounds in perpetuity.

(ii) Provisions empowering the County to enforce the covenants to maintain the private parks and playgrounds and authorize the performance of maintenance work by the County Engineer in the event of failure by the subdivider, purchaser or occupant to perform such work and permit the subjecting of the land and properties in the subdivision to a lien until paid.

(E) Legal documents shall be drawn up by the subdivider to ensure the above-mentioned conditions and requirements and shall be subject to the review and approval of the County Attorney as to form and legality. The subdivider shall be required to file with the Bureau of Conveyances a declaration of the above-mentioned documents. A certified copy of the documents as issued by the Bureau of Conveyances shall be presented to the Planning Commission as evidence of recordation, prior to occupancy of any subdivision.

(F) Golf courses, marinas or other similar uses, as determined by the Planning Director, which serve only a certain group of individuals shall not be considered as credit for private parks.

(3) Where lands for park and playground were dedicated or provided in perpetuity prior to May 20, 1977, and the Planning Commission determines that the land satisfy the requirements of Section 9-2.8(f)(2), the land may be credited against the park land which would otherwise be required under Section 9-2.8(d); provided that, the credit shall not exceed fifty percent (50%) of the land that would otherwise be required under Section 9-2.8(d). The land shall be subject to the standards enumerated under Section 9-2.8(f)(2). (Ord. No. 175, July 3, 1973; Ord. No. 271, December 22, 1975; Sec. 9-2.8, R.C.O. 1976; Ord. No. 304, May 20, 1977; Sec. 9-2.8, 1978 Cumulative Supplement; Ord. No. 397, August 11, 1980)

Sec. 9-2.9 Public Access-Ways for Any Subdivision.

(a) The Planning Commission shall require a subdivider or developer, as a condition precedent to final approval of a subdivision, in cases where public access is not already provided, to dedicate land for public access by right-of-way or easement for pedestrian travel from a public highway or public streets to the land below the high-water mark on any coastal shoreline, and to dedicate land for public access by right of way from a public highway to areas in the mountains

where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding and other recreational purposes, and where there are existing mountain trails.

The Planning Commission may require dedication of public access as described above to areas where there are no existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding and other recreational purposes, and where there are no existing mountain trails.

The Planning Commission may also require similar public access in areas in which a subdivision abuts, encompasses, or is in close proximity to other public resources, recreational areas, parks, schools, or other public facilities.

(b) Designation of public access-ways shall be subject to the following requirements:

(1) "Standard" public access-ways shall be a minimum of ten (10) feet in width.

(2) The Planning Commission shall establish the preferred public access alignment with consideration of such factors as topography, approximate location to the nearest public street, and configuration of subdivision lots or development site.

(3) "Standard" public access-ways shall be designated at intervals of not less than three hundred (300) feet and not greater than fifteen hundred (1,500) feet. The Planning Commission may require that access-ways be consolidated to provide sufficient area for vehicular access, parking, development of shoreline or other recreational facilities, or other public purposes; or may modify "standard" public access-ways to take into consideration terrain features, length of frontage, uses of the parcel to be subdivided, and other pertinent factors; provided, however, that the total area to be conveyed shall not differ substantially from that which would be required by the provision of "standard" public access-ways, unless additional areas and improvements are mutually agreed to by the subdivider and the appropriate county agencies.

(4) Public access-ways shall be designed to specifications approved by the Department of Public Works and the Planning Department.

(5) Where lands comprising a subdivision do not span the entire distance between public resources, recreational areas, parks, schools, or other public facilities to which it has been determined that public access is necessary, the Planning Commission shall

require conveyance of those segments of the needed public access-way laying within the proposed subdivision. Partial access-way segments shall be conveyed to the County pursuant to requirements contained in Section 9-2.9(i). Partial access-way segments so designated need not be open to public access until the entire access-way is dedicated.

(6) Public access-ways shall be clearly designated on the final map(s) of the subdivision.

(7) The County shall indemnify the landowner from injury to members of the public who are injured within the access-way.

(8) Other specifications for improvements may include but not be limited to off-street parking requirements, turnarounds, grading, and greater access width.

(9) The County Engineer may restrict or prohibit passage over a public access-way for thirty (30) days if the County Engineer determines that:

(A) the access-way is unsafe;

(B) the area being accessed is hazardous; or

(C) the area is being reserved by the County as a partial segment for a future public access-way.

If the County Engineer determines that a public access-way may require restrictions that exceed thirty (30) days, such recommendation shall immediately be transmitted to the Council for approval. In the event the public access-way continues to require restrictions and Council approval has not been obtained, the County Engineer may extend the required restrictions for an additional thirty (30) days so long as the determination is consistent with the criteria set forth in this Section. In cases where the Council has disapproved a recommendation to restrict passage over a public access-way, the County Engineer shall not have the authority to extend the restrictions. The Council shall be notified in writing of any restrictions of public access-ways no matter of its duration.

(c) In cases where a subdivision is in close proximity to an existing access-way or where the County Engineer determines that an access-way is not feasible due to physical constraints or hazardous conditions, the Planning Commission may require

the subdivider to improve existing access-ways within or in close proximity to the parcel being subdivided.

In cases where a subdivision is in close proximity to an existing access or where the County Engineer determines that an access is not feasible due to physical constraints or hazardous conditions, and where it has been determined that existing access-ways within or in close proximity to the parcel being subdivided cannot be improved, the Planning Commission may assess an in-lieu fee equivalent to the difference between the fair market value of the affected lot or lots without an access easement and the fair market value of the affected lot or lots with an access easement. The land area shall be calculated as a ten-foot (10') wide portion of the property extending from the location that the property boundary line fronts a public street to the boundary line abutting the public resource.

(1) Fees paid pursuant to this section shall be made directly to the Director of Finance and said fees shall be deposited in a separate 'Public Access Fund.' Payment may be made in a lump sum at the time of Final Subdivision Map approval; or fifty percent (50%) at the time of Preliminary Subdivision Map approval and the balance paid at the time of Final Subdivision Map approval.

(2) All monies received shall be used for the acquisition and development of public access-ways.

If the County and the subdivider fail to agree on the fair market value of the land, the value shall be fixed and established by the majority vote of three (3) land appraisers; one (1) being appointed by the subdivider, one (1) being appointed by the County, and the third (3rd) being appointed by the Fifth Circuit Court. The subdivider and the County shall equally bear the fees of appraisal and costs thereof.

(d) The Planning Commission may require a subdivider to improve an access-way in a subdivision prior to dedication to the County. Upon dedication of land for a public access-way as required by this section and upon acceptance by the County, the County shall thereafter assume the costs of additional improvements for and maintenance of the access-way, and the subdivider shall accordingly be relieved from such costs.

(e) The Planning Commission may also require public access to and the preservation of all significant historic and archaeological sites known or discovered on the parcel to be subdivided, as determined by the Planning Commission after

seeking and receiving input from affected agencies, and community and cultural groups.

(f) For the purposes of this section, "subdivision" means any land which is divided or is proposed to be divided for the purpose of disposition into six (6) or more lots, parcels, units, or interests and also includes any land whether contiguous or not, if six (6) or more lots are offered as part of a common promotional plan of advertising and sale. However, the Planning Commission may require access-ways to be conveyed to the County when the land is divided into less than six (6) lots, parcels, units or interest. For the purposes of this section, the definitions of lots, parcels, units, or interests shall be applicable to condominium property regime projects created and established pursuant to Chapter 514A, Hawai'i Revised Statutes.

(g) The right of transit along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation or by the debris left by the wash of the waves. However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the Planning Commission may require the conveyance of a right of way or easement along the makai boundaries of the property lines public transit corridors which shall be not less than ten feet wide. The Planning Commission may also require lateral access or transit ways in other situations where they determine it is in the public interest.

(h) The access-way shall be clearly designated on the final map of the subdivision or development.

(i) Upon approval of the preliminary subdivision map and prior to receiving approval of the final subdivision map from the Planning Commission, the subdivider shall deposit conveyancing documents in form and content acceptable to public access free and clear of all encumbrances. Failure to timely submit such documents to the Planning Commission prior to approval of the final subdivision map shall be sufficient grounds for disapproval of the final subdivision map. (Ord. No. 175, July 3, 1973; Sec. 9-2.9, R.C.O. 1976; Ord. No. 777, November 28, 2001; Ord. No. 801, January 17, 2003)

Sec. 9-2.10 Lot Sizes.

Minimum lot area, minimum lot frontage and width, and lot width to depth ratios, shall conform to the provisions of the Comprehensive Zoning Ordinance. (Ord. No. 175, July 3, 1973; Sec. 9-2.10, R.C.O. 1976)

Sec. 9-2.11 Blocks.

The dimension, shape and orientation of blocks shall be determined with due regard to:

(1) provision of building sites suitable to the use and type of buildings contemplated;

(2) minimum site requirements, particularly as to site, slope, and dimensions;

(3) control, safety and convenience of pedestrian and vehicular traffic;

(4) topography and other land features;

(5) orientation and scenic enhancement;

(6) length of blocks shall not be more than one thousand eight hundred (1,800) feet;

(7) and a pedestrian way of six (6) feet minimum width may be required through the center of any block longer than one thousand two hundred (1,200) feet. (Ord. No. 175, July 3, 1973; Sec. 9-2.11, R.C.O. 1976)

Sec. 9-2.12 Property Pins.

Prior to final acceptance of subdivision improvements, the subdivider shall provide property pin markers for all lots. (Ord. No. 175, July 3, 1973; Sec. 9-2.12, R.C.O. 1976)

Sec. 9-2.13 Consolidation Of Lots.

All consolidation of lots shall be processed through the Planning Commission and shall require its approval before recordation of any map or document pertinent to the consolidation. The Planning Commission shall establish rules and fee for consolidation of lots. (Ord. No. 175, July 3, 1973; Sec. 9-2.13, R.C.O. 1976)

Sec. 9-2.14 Cemetery Lots.

Cemetery lots shall mean burial or other interment lots in cemeteries approved by the Department of Health. The standards relative to improvement requirements shall not apply to individual lots in a cemetery. (Ord. No. 175, July 3, 1973; Sec. 9-2.14, R.C.O. 1976)

ARTICLE 3. PROCEDURE FOR APPROVAL OF SUBDIVISIONS

Sec. 9-3.1 When Approval Necessary.

No person shall record a map of a subdivision or sell, lease or convey any lot, parcel or unit in a horizontal property regime within a subdivision unless the preliminary

map, grading plans, construction plans, and final map of the subdivision have been approved as provided in this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-3.1, R.C.O. 1976)

Sec. 9-3.2 Application For Approval Of Preliminary Subdivision Maps.

(a) A preliminary subdivision map may be filed by the owner of the property sought to be subdivided, or by any person duly authorized by the owner. The preliminary subdivision map, wherever feasible, shall be filed together with one (1) application for the required zoning permit, as provided in the Comprehensive Zoning Ordinance, and two (2) applications, if any, for necessary use permits and variance permits, as provided in the Comprehensive Zoning Ordinance. Information required in the applications may be shown in the preliminary subdivision map, and the Planning Commission, to the extent feasible, shall act upon the preliminary subdivision map and all applications simultaneously.

(b) Filing Fees. Each subdivider at the time of filing the preliminary subdivision map shall pay a non-refundable fee of Three Dollars ($3.00) for each lot shown on the preliminary subdivision map. (Ord. No. 175, July 3, 1973; Sec. 9-3.2, R.C.O. 1976)

Sec. 9-3.3 Form And Content Of Preliminary Subdivision Map.

Twelve (12) copies of a preliminary subdivision map shall be filed with the Planning Department. The map shall be clearly and legibly drawn and shall consist of a map and data to accompany the map as provided in this Article.

(a) Form and Contents of the Map. The map shall conform as to size and scale with the standard set forth in Section 502-19, H.R.S., or shall be contained on legal size paper. When more than one (1) sheet is required, an index sheet of the same size shall be filed which shows the entire subdivision on one (1) sheet, with block and lot numbers. The map shall contain the following information, except to the extent that the Planning Director waives the requirements.

(1) Name of the owner of record, subdivider, or his agent, and the registered surveyor or engineer who prepared the map.

(2) Date, north arrow, scale, tax map key and subdivision name.

(3) The names and locations of subdivisions adjoining; the locations, names, width of pavements and right-of-ways and other dimensions of existing and proposed streets; the approximate location of easements for utilities including drainage, sewer and water; parks and other public places or spaces on immediately adjoining properties.

(4) The approximate location in the adjoining streets or property of existing sewers, water mains,

including hydrants and meters, culverts, water courses and storm drain lines and appurtenances, and electric lines proposed to be used by the property to be subdivided and invert elevations of sewers at points of proposed connection. All elevations shall be based on official government bench-marks. The approximate location of existing sewers and water mains and electric lines within the property to be subdivided shall also be shown.

(5) The location of existing cesspools, water courses, and the location of structures and improvements that are to be retained.

(6) The proposed lot and street layout with approximate area and dimensions of the lots, street right-of-ways, easements and setbacks and radius of curves along property lines or center lines of each street.

(7) A tabulation indicating the number and size of lots and the density showing conformance with the provisions of the Comprehensive Zoning Ordinance.

(8) The typical cross-section of the proposed streets when required by the Department of Public Works.

(9) The approximate location and the sizes of all parcels of land proposed to be dedicated to public use and the conditions of the dedication, if any.

(10) All maps shall show pertinent topographical information such as slopes and shapes of land, approximate elevations, watercourses and drainage ways, and other information affecting the design of the subdivision. In order to facilitate the review and evaluation of proposed subdivision improvements, the County Engineer or the Planning Director may require contours showing more exactly the terrain configuration and features. When contours are required the maps shall show existing contours at vertical intervals of five (5) feet where the slope is greater than ten per cent (10%), and not more than two (2) feet where the slope is less than ten per cent (10%).

(11) The Planning Director or the County Engineer may require preliminary profiles showing existing ground lines and proposed grades of streets, when it appears that grades of lots or portion of streets exceed ten per cent (10%) and also the preliminary plan of proposed sanitary sewers and storm drainage facilities with grades and sizes indicated.

(12) When the proposed subdivision is located in a Constraint District, the constraint zones shall be shown.

(13) In a subdivision which may reasonably be expected to be re-subdivided in whole or in part at

some future time, there shall be shown in dotted lines a plan of probable future streets and lotting.

(14) Indicate the estimated on-site and off-site storm drainage runoff quantity and drainage pattern and other pertinent information relative to the existing drainage condition.

(15) For residential subdivisions, the proposed location for bus stops showing possible exits or turnaround routes that may be required to be dedicated pursuant to Sec. 9-2.3(h).

(16) Identify the areas of flood or tsunami hazards, delineating the boundaries of the flood fringe, floodways, general flood plain, and coastal high hazard, and designating the base flood elevations.

(b) Data to Accompany Map. Data to accompany the tentative map shall include a written statement of information regarding:

(1) Existing and proposed use of the property and compliance with requirements of the Comprehensive Zoning Ordinance.

(2) Description of the proposed subdivision, including the number of lots, the density, average and minimum size and the nature of the development.

(3) The methods and techniques that will be used to satisfy the standards and regulations established in Article 3 of this Chapter regarding matters such as general environmental standards, streets, sanitary sewers, storm drainage, water supply and distribution, land alterations, utility lines and facilities, and parks and recreation.

(4) The types and general contents of proposed deed restrictions, if any, relating to any common area, park area, recreation area, or permanent open space area. (Ord. No. 175, July 3, 1973; Sec. 9-3.3, R.C.O. 1976; Ord. No. 406, January 22, 1981; Ord. No. 416, November 4, 1981)

Sec. 9-3.4 Approval Of Preliminary Subdivision Map.

(a) Compliance and Distribution.

(1) The Planning Department within ten (10) calendar days shall check for compliance of form and contents of the map. If the form and contents are found not to be in compliance, it shall be rejected and returned to the applicant in writing.

(2) After the maps have been preliminarily accepted, the Planning Department shall forward copies to the Department of Public Works, the Department of Water, the State Department of Health, and other affected agencies, departments and utility companies, as the Planning Director determines for comment or approval. Accompanying application, if any, for required zoning permits, shall also be referred.

(b) Review. After the preliminary subdivision maps have been preliminarily accepted as to form and contents, the following review schedule shall apply:

	Column 1	**Column 2**
Various governmental agency review to Planning Director.	30 Calendar Days*	45 Calendar Days*
After receipt of the agency reviews, the Planning Director shall prepare a report to the Planning Commission. The Planning Commission shall approve, approve with condition or disapprove preliminary subdivision map.**	45 Calendar Days*	45 Calendar Days*

Column 1: For subdivisions not including streets and improvements where the number of lots to be created is twenty (20) or less.

Column 2: For subdivisions requiring new streets and improvements.

* Or within a longer period as may be agreed to by the applicant.

** If the Planning Commission fails to take action within the time limit prescribed in this Section, unless the applicant assents to a delay, the preliminary subdivision map shall be deemed approved. (Ord. No. 175, July 3, 1973; Sec. 9-3.4, R.C.O. 1976)

Sec. 9-3.5 Construction Plans.

(a) Following approval of the preliminary subdivision map by the Planning Commission, the subdivider shall prepare and submit to the Planning Department six (6) copies of grading plans, construction plans and specifications showing details and road construction, drainage structures, sewers, water mains, and all other utilities proposed to be constructed in the subdivision. The plans shall conform in size, scale, and detail to standards established by the Planning Department, Department of Water and the Department of Public Works. One (1) set of drainage data and information as specified in the Department of Public Works standards shall accompany the construction plans.

(b) The Planning Department shall forward copies of the grading plans, construction plans, and specifications to the Department of Public Works, the Department of Water and the State Department of Health. Any subsequent revisions necessary to make the construction plans in an acceptable standard ready for signature approval may be done between the agencies and the subdivider without being processed through the Planning Department.

Upon approval of construction plans by each department, the Planning Director shall review the plans. If the Planning Director determines that the plans conform to the approved preliminary subdivision map, as conditioned by the Planning Commission, he shall approve the plans. If the construction plans deviate from the approved preliminary subdivision map, as conditioned by the Planning Commission, the Planning Director may approve the construction plans if he determines that the deviations are not substantial. If the Planning Director determines that the deviations are substantial he shall disapprove the construction plans and return them to the subdivider with a written specification of changes required. If the subdivider disagrees with the Planning Director he may appeal the decision to the Planning Commission which will process the appeal in the same manner as provided for the review of a preliminary subdivision map.

(1) The various governmental agencies required to approve construction plans shall take action on the plans within sixty (60) calendar days of their submission by the applicant or within a longer period as may be agreed to by the applicant.

(2) After action is taken by the agencies, the Planning Director shall take action on the plans within fifteen (15) calendar days.

(3) If the agencies and the Planning Director fail to take action within the time limits prescribed in Section 9-3.4 the construction plans shall be deemed approved.

(c) The following signatures shall be required on the construction plans:

(1) Representative of the Department of Health;

(2) County Engineer, Department of Public Works;

(3) Manager and Chief Engineer, Department of Water;

(4) Planning Director, Planning Department;

(5) And others as required by the Planning Director.

(d) Approval of construction plans shall not be construed as approval of the utility plans if the utilities are not under County jurisdiction.

(e) The approved construction plans shall be in effect for only one (1) year unless construction is started. If construction is not started within this one (1) year period, the construction plans shall be resubmitted for review and approval by all agencies.

(f) In case of a subdivision which does not involve any construction or widening of highways or streets, or drains, or the construction or extension of utilities, including water and sewer mains, the applicant may prepare a preliminary subdivision map, and a final subdivision map of the proposed subdivision without preparing construction plans. Final approval of the final map shall be granted as

provided in this Chapter upon certification by the Planning Director, County Engineer, and Manager, that, where required, an adequate deposit has been made with proper agencies assuring the installation of necessary service laterals for water and sewer service and other conditional requirements.

(g) All construction plans shall be certified by a professional engineer having especially qualified in the civil branch. (Ord. No. 175, July 3, 1973; Sec. 9-3.5, R.C.O. 1976)

Sec. 9-3.6 Completion Of Improvements, Agreement And Bond.

After approval of the construction plan, the applicant may construct the required improvement prior to seeking approval of the final subdivision map, or the applicant may enter into an agreement with the County guaranteeing the construction of improvements at his own expense within a reasonable time period specified by the Planning Commission in which case he may seek approval of the final subdivision map prior to constructing the required improvements.

(a) Construction of Improvements Prior to Approval of Final Subdivision Map. The applicant may proceed with the construction of the required improvements and after completion of the required improvements, and approval by the Planning Commission, the applicant shall file for approval of the final subdivision map as provided in this Article.

(b) Agreement and Bond Prior to Approval of Final Subdivision Map. In the event that the applicant desires approval of the final subdivision map prior to constructing the required improvements, he shall file the following documents with the Planning Commission:

(1) A subdivision agreement, approved by the County Attorney, guaranteeing that the applicant will complete the construction of required improvements free of all liens within a time period specified by the Planning Commission and will make full payment therefor, and providing that if the applicant fails to so complete the improvements within the time specified, or an extension as may be mutually agreed upon, the County may complete the improvement and recover the full cost of expenses thereof from the applicant.

(2) A bond or security in one (1) of the following forms:

(A) A surety bond (other than personal surety) in the sum equal to the cost of all work required to be done by the applicant as estimated by the County Engineer and Manager pursuant to the subdivision agreement and conditioned upon the full and faithful performance of any and all work. The surety bond shall provide that should the applicant fail to complete as required within the time specified by the Planning Commission, the

County may complete the work and recover the full cost and expense thereof from the surety. The surety bond, or any portion thereof, shall not be released until all improvements have been satisfactorily completed.

(B) Where the applicant has entered into a contract with a responsible contractor for the construction of improvements, one (1) copy of the following shall be submitted:

(i) A certified copy of his contracts;

(ii) A certified copy of the contractor's performance bond in a sum equal to at least fifty per cent (50%) of the cost of all work required; and

(iii) A surety bond (other than personal surety) in a sum equal to at least fifty per cent (50%) of the cost of all work required to be completed by the applicant as estimated by the County Engineer and Manager which bond shall be conditioned as set forth in Section 9-3.6(b)(2)(A). Surety bond or any portions thereof shall not be released until all improvements have been satisfactorily completed.

(C) Cash, negotiable bonds, or other securities acceptable to the Planning Commission in an amount equal to that prescribed for a surety bond under Section 9-3.6(b)(2)(A). (Ord. No. 175, July 3, 1973; Sec. 9-3.6, R.C.O. 1976)

Sec. 9-3.7 Construction Inspection.

(a) Notification. The applicant shall notify the Department of Public Works and the Department of Water at least five (5) days before commencement of construction of improvements.

(b) Inspection and Control of Work.

(1) All work done in constructing the improvements and all materials furnished shall be subject to the inspection of the Department of Public Works and the Department of Water.

(2) Departments shall have access to the work at all times during its construction and shall be furnished with every reasonable facility for ascertaining that the materials used and the workmanship are in accordance with the requirements of this Chapter and the standards established by the departments.

(3) If any of the work on improvements is done by the applicant prior to the approval of the construction plans, or prior to the inspections of the improvements as required by the departments, the work may be

rejected and shall be deemed to have been done at risk and peril of the applicant.

(c) Inspection Fee. Prior to commencement of construction, the applicant shall pay to the Department of Public Works the cost for the inspection of the work and checking and testing of the materials a sum equal to one-half of one per cent (1/2 of 1%) of the estimated construction cost exclusive of the cost of water facilities.

(d) Approval of Work. When all improvement work required by the construction plan is completed to the satisfaction of the Department of Public Works and the Department of Water, the departments shall issue certificates stating that the work has been satisfactorily completed and recommending approval by the Planning Commission. (Ord. No. 175, July 3, 1973; Sec. 9-3.7, R.C.O. 1976)

Sec. 9-3.8 Final Subdivision Map.

(a) If the final map is to be filed with the Land Court for recordation, it shall comply with the requirements specified under the rules of the Land Court for Land Court subdivisions. If the final map is not to be filed with the Land Court, it shall contain the following data:

(1) The final map of all registered land shall conform as to size and scale with the standards set forth in Section 502-19, H.R.S. Where the final map is not to be filed with the Land Court, it may be acceptable to the Planning Commission if it is legal size, eight and one-half by thirteen (8 1/2 x 13) inches, or of other size as it may be acceptable to the Planning Commission. When more than one (1) sheet is required an index sheet of the same size shall be filed to show the entire subdivision on one (1) sheet with block and lot numbers.

(2) The final map shall show the following information:

(A) Name and address of the owner of record, subdivider or his agent, and of the registered surveyor who prepared the map.

(B) The date, title, north arrow, scale and tax key. The title shall include the name of the subdivision under which it is to be recorded.

(C) Locations of all proposed streets, easements, parks and other open spaces, reservations, lot lines, set-back lines; also names and lines of all adjoining or existing streets.

(D) The length and true azimuths of all straight lines, radii, chords, and central angles of all curves along the property lines of each street, all dimensions and true azimuths along the lines of each lot, and also any other data

necessary for the location of all building lines proposed to be imposed by the subdivider, including set-back lines.

(E) All subdivisions shall be shown to have been accurately surveyed, coordinated to the Government survey triangulation stations and permanently monumented on the ground with approved survey monuments. The error of closure in traverse around the subdivision and around interior lots or blocks shall not exceed one (1) foot to ten thousand (10,000) feet of perimeter.

(F) Names of all subdivisions immediately adjoining; or when adjoining property is not a recorded subdivision, the names of the owners thereof.

(G) Boundary of the subdivided tract, with courses and distances marked thereon. The boundary shall be determined by survey in the field by a registered land surveyor and certified to be correct.

(H) Any conditional requirements imposed as a condition for subdivision by the respective agencies.

(b) Final Subdivision Map; Supplemental Documents. The final subdivision map shall be accompanied by the following documents:

(1) A certificate from a professional land surveyor duly licensed in the State of Hawaii attesting to the accuracy of the map.

(2) The preliminary prints shall be accompanied by a preliminary title report of the property shown on the map.

(3) The subdivision agreement and bonds provided for in Section 9-3.6(b) in cases in which the applicant seeks approval of the final subdivision map prior to constructing required improvements.

(4) The certificates provided for in Section 9-3.7 in cases in which the applicant has already constructed required improvements, together with deeds of conveyance conveying a warranty title to all the streets and other improvements and easements associated with the improvements within the subdivision which the applicant offers for dedication to the County.

(5) Cash payment, or proof of payment, for all checking and filing fees; facilities reserve charge and other charges as required by the Department of Water and other applicable fees or deposits.

(6) Deeds for easements or rights-of-way required for road, drainage or other purposes which have not been dedicated on the final map.

(7) Written evidence acceptable to the County in the form of rights-of-entry or permanent easements across

private property outside of the subdivision permitting or granting access to perform necessary construction work, permitting the maintenance of the facility, and providing access to the subdivision.

(8) Agreements acceptable to the County executed by the owners of existing utility easements within proposed road right-of-way consenting to the joint use of the right-of-way as may be required by the County for the public use and convenience of the road.

(9) Evidence of formation of legal entities when required to operate and perform all required maintenance and services.

(10) Deed restrictions relating to any common park or recreation area.

(11) An electronic record (digitized format) of the final map(s).

(c) Filing of Final Subdivision Map.

(1) The applicant shall file fifteen (15) copies of the subdivision final map with the Planning Department within one (1) year after approval of the preliminary subdivision map. If no filing is made, the approval of the preliminary subdivision map and construction plan shall become void unless an extension of time is granted by the Planning Commission.

(2) An applicant may elect to file for approval of a final map covering only a portion of the approved preliminary map if he declares his intention at the time he files the preliminary map. Each partial final map shall apply to approval for a partial final map and the subdivision agreement required of the applicant shall provide for the construction of improvements as may be necessary to constitute a logical and orderly development of the whole subdivision by units.

(d) Action on Final Subdivision Map.

(1) Planning Director. After accepting the filing of the final subdivision map, the Planning Director shall send a report to the Planning Commission indicating whether the final map conforms to the terms, conditions and format of the preliminary subdivision map which has been previously approved or conditionally approved by the Planning Commission and to the approved construction plans. The report shall incorporate written reports by the County Engineer and the Manager and shall also indicate whether the other requirements of this Chapter, other Ordinances and State law have been satisfied.

(2) Planning Commission. After the receipt of the report from the Planning Director, the Planning Commission shall determine whether the final subdivision map substantially conforms to the terms, conditions and format of the preliminary subdivision map which has been previously approved or conditionally approved, and to the approved construction plans, and

whether the applicant has satisfied all other requirements imposed by law. The Planning Commission shall accordingly approve or disapprove the final subdivision map.

(3) Time Limits. If the Planning Commission fails to take action on the final subdivision map within forty-five (45) calendar days from the date of acceptance, unless the applicant assents to a delay, the final subdivision map shall be deemed approved.

(4) Recordation. The final subdivision map or a metes and bounds description of the subdivision must be recorded prior to or at the time of conveyance of interest in any lot or parcel. If no such timely recordation is made, the approval of the preliminary subdivision map, the construction plans, and the final subdivision map shall become void.

(5) Errors and Discrepancies. The approval of the final subdivision map by the Planning Commission shall not relieve the applicant of the responsibility for any error in the dimensions or other discrepancies or oversights. Errors, discrepancies, or oversights shall be revised or corrected, upon request to the satisfaction of the Planning Commission. (Ord. No. 175, July 3, 1973; Sec. 9-3.8, R.C.O. 1976; Ord. No. 422, March 31, 1982; Ord. No. 771, June 29, 2001)

Sec. 9-3.9 Approval Of Improvements Constructed After Approval Of Final Subdivision Map.

(a) The requirements and procedures provided in Section 9-3.7 shall apply to improvements required by a subdivision agreement where the applicant constructs improvements after the approval of the final subdivision map.

(b) The applicant shall prosecute the work to completion without undue delay except for inclement weather or other reasonable cause. Delay in completion of the work beyond the period stated in the Subdivision Agreement, unless an extension thereof is approved by the Planning Commission and the Surety Company, may result in forfeiture of the cash deposit and security, or a portion thereof, for the completion of the work.

(c) Upon the issuance of the certificates provided for in Section 9-3.7(d), the Planning Commission shall approve the improvements if they substantially conform to the construction plans. Any unexpended cash deposits not required for completion of the work shall be refunded.

(d) The applicant shall submit warranty deeds together with a certificate of title showing merchantable title to all the streets and other improvements, and easements associated with improvements within the subdivision which the applicant offers for dedication to the County. (Ord. No. 175, July 3, 1973; Sec. 9-3.9, R.C.O. 1976)

Sec. 9-3.10 Dedications.

(a) Subject to the provisions of Section 9-3.10(b), approval of improvements by the Planning Commission and acceptance of deeds by the Council submitted by the applicant pursuant to Section 9-3.8(b) and Section 9-3.9(d) shall constitute acceptance of dedication by the County.

As a condition for acceptance of deeds, the applicant shall submit two (2) sets of "As-Built" prints with the "As-Built" tracing of the complete construction plans plus additional tracings of that portion of the construction plans covering the water facilities.

(b) The County shall not take over, receive by dedication, or otherwise, or improve, grade or repair, or do any construction work upon streets or pavements, water lines, street lighting system, sewer repairs, or in any way accept as public highways and streets, avenues or alleys in any subdivision within the County opened or proposed to be opened, unless the street or way has been laid out, approved, and improved in accordance with the provisions of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-3.10, R.C.O. 1976)

Sec. 9-3.11 Other Permits.

No permit shall be issued to cut a curb, tap a water or sewer line, or install any water, lighting or sewer facilities in the area covered by a proposed subdivision until the subdivision has been approved as required by the provisions of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-3.11, R.C.O. 1976)

ARTICLE 4. MODIFICATIONS OF REQUIREMENTS

Sec. 9-4.1 Authority.

The Planning Commission may modify the requirements of this Chapter only in particular cases as provided in this Article. (Ord. No. 175, July 3, 1973; Sec. 9-4.1, R.C.O. 1976)

Sec. 9-4.2 Standards.

Modification of the requirements of this Chapter shall be made only if it is found that because of special circumstances applicable to the property sought to be subdivided, including size, shape, topography and location, the strict application of the regulations would deprive the applicant of privileges enjoyed by other property within the vicinity and would work a special hardship on the applicant. Where those conditions are found, the modification permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation and special hardship and will not create significant probabilities of harm to

property and improvements in the neighborhood or of substantial harmful environmental consequences.

In no case may a modification be made that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the making of the modification. (Ord. No. 175, July 3, 1973; Sec. 9-4.2, R.C.O. 1976)

Sec. 9-4.3 Procedures.

An application for a modification in requirements will normally be considered by the Planning Commission at the time it considers whether to approve the preliminary subdivision map. If an applicant seeks a modification before or after that time, the variance procedures established in the Comprehensive Zoning Ordinance shall apply to the application. (Ord. No. 175, July 3, 1973; Sec. 9-4.3, R.C.O. 1976)

ARTICLE 5. ENFORCEMENT, LEGAL PROCEDURES AND PENALTIES

Sec. 9-5.1 Issuance Of Permit.

All departments, officials and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no permits or licenses for construction, development, uses, activities or other purposes where they would be in conflict with the provisions of this Chapter; any permits or licenses, if issued in conflict with the provisions of this Chapter shall be void. (Ord. No. 175, July 3, 1973; Sec. 9-5.1, R.C.O. 1976)

Sec. 9-5.2 Enforcement.

It shall be the duty of the Planning Commission and the Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-5.2, R.C.O. 1976)

Sec. 9-5.3 Appeal.

All decisions of the Planning Director in the interpretation or enforcement of the provisions of this Chapter may be appealed in writing to the Planning Commission within fifteen (15) days of the Director's decision. (Ord. No. 175, July 3, 1973; Sec. 9-5.3, R.C.O. 1976)

Sec. 9-5.4 Penalty.

Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating or causing or

permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500) for each offense. The continuance of any violation after conviction shall be deemed a new offense for each day of continuance. (Ord. No. 175, July 3, 1973; Sec. 9-5.4, R.C.O. 1976)

CHAPTER 9A

AGRICULTURAL PARK SUBDIVISION

ARTICLE 1. GENERAL PROVISIONS

Sec. 9A-1.1 Findings And Purpose.

The Council finds that there is a pressing need to encourage diversified agriculture in the County. One of the basic requirements in promoting diversified agricultural is the availability of land. To encourage landowners to provide land for agricultural purposes, the Council finds it desirable to designate an area within an Agricultural or Open zone strictly for the growing of crops and other agricultural pursuits wherein the strict requirements of the Subdivision Ordinance would be reduced thereby eliminating a substantial part of the investment required for the normal subdivision improvements. To enable the farmers to acquire land without substantial and burdensome capital investment requirements, but at the same time removing the risk of agricultural land being converted into residential or other

non-agricultural areas without meeting the normal minimum subdivision requirements, the County finds it desirable to create a new type of subdivision within an Agricultural or Open zone entitled "Agricultural Park" with sufficient restrictions and controls to assure the availability of such parks for farmers and at the same time preventing the risk of such agricultural parks becoming residential or other non-agricultural areas that do not conform to subdivision standards, the Council enacts this Ordinance. (Ord. No. 234, December 6, 1974; Sec. 9A-1.1, 1978 Cumulative Supplement)

Sec. 9A-1.2 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

(1) 'Agricultural Park' means a subdivision of an area of not less than three hundred fifty (350) acres within an Agricultural or Open zone as established in the Comprehensive Zoning Ordinance restricted to agricultural uses by lease restrictions for a period of at least twenty (20) years and which shall comply with the conditions contained in this Chapter. (Ord. No. 234, December 6, 1974; Sec. 9A-1.2, 1978 Cumulative Supplement)

ARTICLE 2. REQUIREMENTS AND STANDARDS FOR AGRICULTURAL PARK SUBDIVISION

Sec. 9A-2.1 Conditions.

The Planning Commission may approve agricultural parks under the following basic conditions:

(a) Agricultural parks shall be limited to leasehold lots not less than ten (10) acres in size. The individual lot lease shall provide that the lot is restricted to agricultural purposes for a minimum period of twenty (20) years.

(b) In the event conditions relative to the area in which an agricultural park is located, change to such an extent that an agricultural park is no longer feasible or desirable, the lessor-owner may apply to the Planning Commission to cancel the agricultural park subdivision provided that the consent of all lessees within the park shall be first secured. Upon the approval of the cancellation of the park by the Planning Commission the entire park shall revert to its original single-lot status and all provisions of the Comprehensive Zoning Ordinance and Subdivision Ordinance shall apply to the consolidated lot.

(c) No dwellings, permanent or temporary, including trailers and campers, shall be constructed or moved upon or located on any lot within an agricultural park. This restriction shall not prohibit the construction of storage sheds, equipment sheds or other structures appropriate to the agricultural activity carried on within the lot.

(d) All road standards and improvements, including requirements for pavement and pavement width, drainage, sewer and water supply set forth in the Comprehensive Zoning Ordinance or the Subdivision Ordinance shall not apply to agricultural parks. The Planning Commission may approve roadway widths less than required under the Subdivision Ordinance, but each lot shall be provided an access to a government road.

(e) Public access. The Planning Commission may require the dedication of adequate public access ways not less than ten (10) feet in width to publicly owned land or waters and may require the preservation of all historic and archaeologic sites known or discovered on the agricultural parks. (Ord. No. 234, December 6, 1974; Sec. 9A-2.1, 1978 Cumulative Supplement)

Sec. 9A-2.2 Utilities.

The provisions of Section 9-2.4 to 9-2.8, inclusive, of the Subdivision Ordinance shall not apply to agricultural parks unless specifically provided for herein. (Ord. No. 234, December 6, 1974; Sec. 9A-2.2, 1978 Cumulative Supplement)

Sec. 9A-2.3 Lot Sizes.

No lot within an agricultural park shall be smaller than ten (10) acres. The provisions of Section 8-7.4 of the Comprehensive Zoning Ordinance shall not apply to agricultural parks. (Ord. No. 234, December 6, 1974; Sec. 9A-2.3, 1978 Cumulative Supplement)

ARTICLE 3. PROCEDURE FOR APPROVAL OF AGRICULTURAL PARK SUBDIVISION

Sec. 9A-3.1 When Approval Necessary.

No person shall record a map of an agricultural park subdivision or sell, lease or convey any lot within an agricultural park until a final map of the subdivision has been approved as provided in this Chapter. (Ord. No. 234, December 6, 1974; Sec. 9A-3.1, 1978 Cumulative Supplement)

Sec. 9A-3.2 Filing Fees.

Each subdivider at the time of filing the preliminary subdivision map shall pay a non-refundable fee of Three Dollars ($3) for each lot shown on the preliminary

Subdivision map. (Ord. No. 234, December 6, 1974; Sec. 9A-3.2, 1978 Cumulative Supplement)

Sec. 9A-3.3 Application For Approval Of Subdivision Final Maps.

The applicant or a person duly authorized by such applicant shall file a combined preliminary and final subdivision map of the proposed agricultural park subdivision without requirement of construction plans. In the event utilities other than electrical power and telephone service are to be installed to service the agricultural park, construction plans for such utilities shall be required and approved as provided by the Subdivision Ordinance. Tentative approval of such final map may be granted upon certification by the Planning Director, County Engineer, and Water Board Manager, that the requirements for an agricultural park are satisfied on the proposed map. (Ord. No. 234, December 6, 1974; Sec. 9A-3.3, 1978 Cumulative Supplement)

Sec. 9A-3.4 Final Subdivision Map.

If the final map is to be filed with the Land Court for recordation, it shall comply with the requirements specified under the rules of the Land Court for Land Court Subdivisions. If the final map is not to be filed with the Land Court, it shall contain the following data:

(a) The final map of all registered land shall conform as to size and scale with the standards set forth in Section 502-19 of the H.R.S. Where the final map is not to be filed with the Land Court, it may be acceptable to the Planning Commission if it is legal size, 8-1/2 x 13 inches, or of such other size as it may be acceptable to the Planning Commission. When more than one sheet is required, an index sheet of the same size shall be filed to show the entire subdivision on one sheet with block and lot numbers.

(b) The final map shall show the following information:

(1) Name and address of the owner of record, subdivider or his agent, and of the registered surveyor who prepared the map.

(2) The date, title, north arrow, scale and tax key. The title shall include the name of the subdivision under which it is to be recorded.

(3) Locations of all proposed streets.

(4) Boundary of the subdivided tract, with courses and distances marked thereon. Such boundary shall be determined by survey in the field by a registered land surveyor and certified to be correct.

(5) Any conditional requirements imposed as a condition for subdivision by the respective agencies. (Ord. No. 234, December 6, 1974; Sec. 9A-3.4, 1978 Cumulative Supplement)

Sec. 9A-3.5 Final Subdivision Map - Supplemental Documents.

(a) The final subdivision map shall be accompanied by the following documents:

(1) A certificate from a registered surveyor attesting to the accuracy of the map.

(2) Cash payment, or proof of payment, for all applicable fees or deposits.

(3) A copy of the lease or deed intended for lots within the agricultural park.

(4) A document executed by the owner in recordable form identifying all the lots in the park and listing all the conditions and restrictions applicable to all of the park. The document shall also contain a covenant by the owner agreeing to be bound by the terms and restrictions pertaining to agricultural parks until a change is approved by the Planning Commission. (Ord. No. 234, December 6, 1974; Sec. 9A- 3.5, 1978 Cumulative Supplement)

Sec. 9A-3.6 Filing Of Final Subdivision Map.

The applicant shall file six (6) copies of the final subdivision map with the Planning Department. (Ord. No. 234, December 6, 1974; Sec. 9A-3.6, 1978 Cumulative Supplement)

Sec. 9A-3.7 Action On Final Subdivision Map.

(a) Planning Director. After accepting the filing of the final subdivision map, the Planning Director shall send a report to the Planning Commission indicating whether such final map conforms to the terms and conditions for an agricultural park. The report shall incorporate written reports by the County Engineer and the Manager and shall also indicate whether the other requirements of this Chapter, other ordinances and State Law have been satisfied.

(b) Planning Commission. After the receipt of the report from the Planning Director, the Planning Commission shall determine whether the final subdivision map substantially conforms to the terms, conditions and format for an agricultural park and whether the applicant has satisfied all other requirements imposed by law. The Planning Commission shall accordingly approve or disapprove the final subdivision map.

(c) Time Limits. If the Planning Commission fails to take action on the final subdivision map within sixty (60) calendar days from the date of acceptance, unless the applicant assents to a delay, the final subdivision map shall be deemed approved.

(d) Recordation. The final subdivision map must be recorded six (6) months from the approval of the final map by the Planning Commission, unless an extension of time is granted by the Commission, which extension shall not exceed

one (1) year. If no such timely recordation is made, the approval of the final subdivision map shall become void.

(e) Conveyance of Lots Within Agricultural Parks. No lot within an agricultural park shall be conveyed in fee. Any attempted conveyance of a fee title to any lot within an agricultural park without the approval of the Planning Commission shall be void.

(f) Errors and Discrepancies. The approval of the final subdivision map by the Planning Commission shall not relieve the applicant of the responsibility for any error in the dimensions or other discrepancies or oversights. Such errors, discrepancies, or oversights shall be revised or corrected, upon request, to the satisfaction of the Planning Commission. (Ord. No. 234, December 6, 1974; Sec. 9A-3.7, 1978, Cumulative Supplement)

ARTICLE 4. ENFORCEMENT, LEGAL PROCEDURES AND PENALTIES

Sec. 9A-4.1 Penalty.

The provisions of Article 5, Enforcement, Legal Procedures and Penalties, set forth in Chapter 9, the Subdivision Ordinance shall apply to violations of this Chapter in addition to any other sanction mentioned herein. (Ord. No. 234, December 6, 1974; Sec. 9A-4.1, 1978, Cumulative Supplement)

Sec. 9A-4.2 Standards In Agricultural Parks; Subdivision Ordinance And Comprehensive Zoning Ordinance Superseded.

The provisions of this Chapter shall supersede the provisions of Chapter 9, Subdivision Ordinance, and Chapter 8, Comprehensive Zoning Ordinance, relative to standards in agricultural parks. (Ord. No. 234, December 6, 1974; Sec. 9A-4.2, 1978 Cumulative Supplement)

CHAPTER 10

SPECIAL DEVELOPMENT PLANS

(The purpose of this Chapter is to regulate development in specified districts of the County of Kauai that are determined to be of particular public significance because of unique physical and social characteristics. Development plans for the special districts have been formulated pursuant to the stated intentions and purposes of the County General Plan, the Comprehensive Zoning Ordinance and the Subdivision Ordinance. Finally, provisions contained in this Chapter have been drafted to insure development that is compatible with the environmental, social and cultural needs of the special district in question.)

ARTICLE 1. KAPAA-WAILUA DEVELOPMENT PLAN

Sec. 10-1.1 Title And Purpose.

(a) This Article shall be known and may be cited as the "Kapaa-Wailua Development Plan Ordinance." It is adopted:

(1) To implement the intent and purpose of the adopted General Plan and to amend certain portions of the General Plan which are found to be necessary in order to recognize more detailed information and more precise community goals and objectives.

(2) To establish development plans, zoning maps and design criteria to guide and regulate future development and protect certain physical and social characteristics which are found to be of particular public value.

(3) To establish exceptions, modifications or additions to the provisions of the Comprehensive Zoning Ordinance and the Subdivision Ordinance of the County of Kauai in order to more specifically provide for the regulation of Land Use, Subdivision and Development practices within the Kapaa-Wailua Development Plan Area.

(4) For those purposes, the Kapaa-Wailua Development Plan area includes portions of the Kapaa-Wailua Planning Area as delineated on the Development Plan of the Kapaa-Wailua Planning Area and zoning maps of the County of Kauai, pursuant to Section 8-9.6 of the Comprehensive Zoning Ordinance.

(b) Nature of Kapaa-Wailua Development Plan Ordinance. This Article supplements the Comprehensive Zoning and Subdivision Ordinances in regulating use and development practices and, in addition, provides a framework and guidelines to direct the physical locations and relationships of major improvements, buildings and landscape within the Kapaa-Wailua Development Plan Area.

The Administrative Guidelines of this Article include:

(1) Development Plans suggesting future and existing locations of major or critical circulation systems, access points, building area and setbacks.

(2) Design Control Plans, Standards, Guidelines and Criteria suggesting critical design features, such as existing vegetation, historic and archaeological sites, views, lighting location and future landscape requirements.

(3) Kapaa-Wailua Development Plan Report which served as the basis of the Plan.

(4) The Kapaa-Wailua Improvement Advisory Committee to serve as a continuing group for citizen participation in design review and the recommendation of proposed development and monitoring of the Kapaa-Wailua Development Plan.

(c) Application of Regulations.

(1) In administering and applying the provisions of this Article, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purposes of this Article.

(2) Unless otherwise expressly prohibited by law, the provisions of this Article shall apply to the Special Planning Areas A, B and C and the Wailua-Waipouli "resort" area as described in this Article within the Kapaa-Wailua Development Plan Area.

(3) The regulations and procedures established in the Comprehensive Zoning and Subdivision Ordinances shall apply within the Kapaa-Wailua Development Plan Area, except to the extent that the regulations or procedures are changed or modified by the provisions of this Article. When the provisions of this Article differ from the provisions of the Comprehensive Zoning Ordinance or the Subdivision Ordinance with respect to a particular subject matter of regulation, the provisions of this Article shall apply. (Ord. No. 254, June 16, 1975; Sec. 10-1.1, R.C.O. 1976)

Sec. 10-1.2 Designation Of Zoning Map.

In order to carry out the purpose of this Article, the zoning maps ZM-WP 500 (Wailua-Waipouli) and ZM-KP 500 (Kapaa-Kealia) of the CZO are amended and designated as the Zoning Maps of portions of the Kapaa- Wailua Planning Area. (Ord. 254, June 16, 1975; Sec. 10-1.2, R.C.O. 1976; Ord. No. 770, June 19, 2001)

Sec. 10-1.3 Special Planning Areas, Uses And Procedures.

(a) Generally Permitted Uses and Structures in Special Planning Area "A."

(1) Accessory uses and structures
(2) Churches and temples
(3) Clubs, lodges and community centers
(4) Commercial indoor amusement
(5) Department stores
(6) Household services
(7) Light manufacturing, such as handicrafts and garment fabrication
(8) Minor food processing, such as cracked seeds, jellies, candies and ice-cream
(9) Museums, libraries and public services
(10) Offices and professional buildings
(11) Parking garages
(12) Personal services, such as barber and beauty shops, laundromats, etc.
(13) Public offices and buildings
(14) Public parks and monuments
(15) Restaurants and food services
(16) Retail sales
(17) Multiple-family dwellings not to exceed R-20 density
(18) Single-family dwellings

(b) Uses and Structures that Require a Use Permit (Special Planning Area "A").

(1) Animal hospital
(2) Automobile and gasoline sales, repair and storage
(3) Botanic and zoologic gardens
(4) Communications facilities
(5) Construction materials storage
(6) Diversified agriculture
(7) Food processing and packaging other than permitted under Section 10-1.3(a)
(8) Light manufacturing other than permitted under Section 10-1.3(a)
(9) Private and public utilities and facilities
(10) Industrial research and development
(11) Schools and day care centers
(12) Warehouses
(13) Hotels and motels not to exceed RR-20 density
(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.

(c) Uses and structures for Planning Areas "B" and "C" and areas designated open district (0) in special planning area "A" shall be in accord with requirements of CZO.

(d) Areas designated general commercial (CG) in special planning area A, B and C shall be subject to the CZO as to permitted uses but shall follow the design standards and guidelines of this Article.

(e) Design Standards and Guidelines. Design standards are as follows:

(1) Special Planning Area "A".

(A) All new structures shall be no more than three (3) floors in height but not to exceed forty (40) feet. Additional height shall be allowed for sloping roofs but not to exceed fifteen (15) feet above the plate line.

(B) All new buildings along Kuhio Highway and Kukui Street shall be built up to five (5) feet from the front property line with canopies or overhanging balconies over the pedestrian way.

(C) Exterior building surfaces shall be wood or incorporate wood trims where allowed by the Building Code.

(D) Exterior color schemes shall be subject to the review of the Kapaa-Wailua Improvement Advisory Committee and approval of the Planning Commission.

(E) All permitted uses except parking garages and multi-family dwellings may be located on the ground floor immediately fronting on Kuhio and Kukui Street.

(F) Immediately fronting on Kuhio and Kukui Street. New buildings along Kuhio Highway and Kukui Street shall be set back five (5) feet for additional sidewalk width. Setback areas shall be paved to match sidewalk.

(G) No buildings shall be closer than forty (40) feet from the edge of the canal right-of-way line.

(H) Off-street parking areas along Kukui Street and Kuhio Highway shall be located in the rear of the properties.

(I) Allowance for twelve feet by thirty-five feet (12'x35') bus stalls shall be provided at all public buildings and tourist establishments.

(J) All development proposals shall include plans and specifications for the landscape development that are approved by the Planning Director and shall be installed prior to the final inspection required under the building permit procedures.

(2) Special Planning Area "B" and "C".

(A) All new structures shall be no more than three (3) floors in height but not to exceed forty (40) feet. Additional height shall be allowed for sloping roofs but not to exceed fifteen (15) feet above the plate line.

(B) Roof colors shall be non-reflective.

(C) Exterior building color schemes shall be subject to the review of the Kapaa-Wailua Improvement Advisory Committee and approval of the Planning Commission.

(D) All development proposals shall include plans and specifications for the landscape development of the entire site at the request of the Planning Director.

Landscape development approved by the Planning Director shall be installed prior to the final inspection required under the building permit procedures.

(E) No buildings shall be closer than forty (40) feet from the edge of the canal right-of-way line.

(F) Exterior signs placed at right angles to the building face and street shall be located below the canopy on the first floor.

Signs shall be indirectly lighted instead of being directly lighted from within. No neon or flashing lights shall be permitted.

Materials for signs shall be wood or non-reflective metals.

All signs shall be subject to the review by the Kapaa-Wailua Improvement Advisory Committee and approval of the Planning Commission.

Existing signs that are nonconforming to these standards shall be removed or made conforming within five (5) years from the effective date of this Ordinance.

(f) Project Development (Special Planning Area A, B and C). The Commission shall find that in cases where the intent of the Kapaa-Wailua Development Plan cannot be met because of parcel size, orientation, shape, lack of adequate utilities, street improvements, or other similar features, the parcels so affected shall be developed in accordance with a project development plan to be initiated either by the property owner or owners, or by the Planning Commission. Where the project involves participation by Federal, State or County agencies such as under the Federal or State Housing Act, or the Improvement district statutes, the plan shall be ratified by the County Council prior to governmental funding.

(g) Project development (Article 18 of the CZO) shall be mandatory for all parcels designated RR-20 or hotel uses within the Kapaa-Wailua Development Plan area. (Ord. No. 254, June 16, 1975; Sec. 10-1.3, R.C.O. 1976; Ord. No. 349, July 1, 1978; Sec. 10-1.3, 1978 Cumulative Supplement)

Sec. 10-1.4 Kapaa-Wailua Improvement Advisory Committee.

(a) Purpose. To insure continuity of community participation in decisions affecting the future of the Kapaa-Wailua Area, to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Kapaa-Wailua Planning Area.

(b) Composition. There is hereby established the Kapaa-Wailua Improvement Advisory Committee. The Committee shall consist of at least five (5) members to be appointed by the Mayor and confirmed by the Council. Members shall serve only for the term of the appointing authority and members shall not serve consecutive terms. Members may not be removed during their term of office. The Planning Director and the County Engineer shall be ex-officio members.

(c) Duties. To review and render advisory opinions on all matters referred to the Committee or matters considered by the Committee on its own initiative relative to the Kapaa-Wailua Development Plan area. Such matters shall include General Plan amendments, zoning amendments, and State land use boundary amendments.

(d) Standards and Criteria. The review and recommendation by the Kapaa-Wailua Improvement Advisory Committee shall be based upon the intent and requirements of the General Plan, the Comprehensive Zoning Ordinance, the Development Plan, and Design Plans applicable within the Kapaa-Wailua Planning Area.

(e) Procedures. the Committee shall meet at its own discretion at a time and place selected by the Committee. The time and place shall be public information. The meeting shall be open to the public and actions or recommendations of the Committee shall be public information.

(f) Time Limitation for Review. When a matter is referred for review and recommendation to the Kapaa-Wailua Improvement Advisory Committee, or when the Committee provides written notification of its intent to review matters not so referred, the applicable time limits for action established by law shall remain in effect. The time limit may be extended only upon written consent of the applicant and only for such period to which the applicant agrees. (Ord. No. 254, June 16, 1975; Sec. 10-1.4, R.C.O. 1976; Ord. No. 461, June 21, 1984)

Sec. 10-1.5 Review Of Kapaa-Wailua Development Plan.

The Commission shall review the Kapaa-Wailua Development Plan and Program at least every five (5) years, and shall initiate any appropriate changes or amendments which are brought about by changes in social, fiscal, economic or other factors. (Ord. No. 254, June 16, 1975; Sec. 10-1.5, R.C.O. 1976)

ARTICLE 2. NORTH SHORE DEVELOPMENT PLAN

Sec. 10-2.1 Title, Purpose, and General Provisions.

(a) This Article shall be known and may be cited as "the North Shore Development Plan Ordinance."

It is hereby adopted:

(1) To implement the intent and purpose of the adopted General Plan and to amend certain portions of the General Plan which are found to be necessary in order to recognize more detailed information and more precise community goals and objectives.

(2) To establish development plans, zoning maps and design criteria to guide and regulate future development and protect certain physical and social characteristics which are found to be of particular public value.

(3) To establish exceptions, modifications or additions to the provisions of the Comprehensive Zoning Ordinance and the Subdivision Ordinance of the County of Kauai in order to more specifically provide for the regulation of Land Use, Subdivision and Development practices within the North Shore Special Planning Area.

(4) For said purposes, the North Shore Special Planning area includes the District of Hanalei as described in Section 4-1(4) of Hawaii Revised Statutes and portions of other Districts located within natural watershed areas draining to the ocean between Moloaa Stream and the Na Pali Coast, as established by the Planning Commission and designated on the zoning maps of the County of Kauai, pursuant to Section 8-9.6 of the Comprehensive Zoning Ordinance.

(b) Nature Of North Shore Development Plan Ordinance. This Article supplements the Comprehensive Zoning and Subdivision Ordinances in regulating use and development practices and, in addition, provides a framework and guidelines to direct the physical locations and relationships of major improvements, buildings and landscape within the North Shore Special Planning Area.

The Administrative Guidelines of this Article include:

(1) Development Plans establishing future and existing locations, by parcel, of major or critical circulation systems, access points, building areas, setbacks, heights and type.

(2) Design Control Plans establishing critical design features, such as existing vegetation, historic and archaeological sites, views, lighting location and future landscape requirements.

(3) The North Shore Improvement Advisory Committees to serve as a continuing group for citizen participation in design review and the recommendation of proposed developments.

(c) Goals and Objectives. The goals and objectives as contained in the North Shore Development Plan Update Report are hereby adopted by this ordinance. Copies of the Development Plan Report are on file at the Office of the Planning Department, County of Kauai.

(d) Application of Regulations.

(1) In administering and applying the provisions of this Article, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Article.

(2) Unless otherwise expressly prohibited by law, the provisions of this Article shall apply to all areas within the North Shore Special Planning Area.

(3) The regulations and procedures established in the Comprehensive Zoning and Subdivision Ordinances shall apply within the North Shore Special Planning Area, except to the extent that such regulations or procedures are changed or modified by the provisions of this Article. When the provisions of this Article differ from the provisions of the Comprehensive Zoning Ordinance or the Subdivision Ordinance with respect to a particular subject matter of regulation, the provisions of this Article shall apply. (Ord. No. 239, December 27, 1974; Sec. 10-2.1, R.C.O. 1976; Ord. No. 476, June 27, 1985)

Sec. 10-2.2 Definitions.

The definitions contained in Section 8-1.5 of the Comprehensive Zoning Ordinance are incorporated herein except to the extent as herein modified.

(1) "Immediate Family" means legally married couples, their children, brothers, sisters and parents.

(2) "Public Utility Carriers" means motorized vehicles such as buses and limousines; and trailers or trains towed by a motorized vehicle.

(3) "Utility Structures" means power facilities such as poles, transformers, substations or wires, sewage facilities such as treatment plants and lift stations; domestic water facilities such as reservoirs, wells and pumping stations; communication facilities such as telephone poles and wires, television antennae, microwave stations, etc. (Ord. No. 239, December 27, 1974; Sec. 10-2.2, R.C.O. 1976; Ord. No. 476, June 27, 1985)

Sec. 10-2.3 Designation Of Zoning Maps.

(a) The maps designated in this section are hereby established as the zoning maps for those portions of the North Shore Special Planning Area included within the boundaries of such maps; provided, however, that the Constraint District Maps established by Section 8-2.1(8) of the Comprehensive Zoning Ordinance shall remain in full force and effect.

(b) In order to carry out the purpose of this Ordinance, the following maps as amended in Attachment "B" of Ordinance No. 476, and as amended herein, and on file with the Planning Department are hereby created and designated as the Zoning Maps of the North Shore Special Planning Area.

ZM-KI600	(Kilauea Town)	Scale:	1" = 400'
ZM-AI700	(Anini Beach)		1" = 200'
ZM-PR700	(Princeville)		1" = 400'
ZM-HA700	(Hanalei Town)		1" = 200'
ZM-WN-HN700	(Wainiha/Haena)		1" = 200'
ZM-WV700	(Wainiha Valley)		1" = 400'

(Ord. No. 239, December 27, 1974; Sec. 10-2.3, R.C.O. 1976; Ord. No. 476, June 27, 1985; Ord. No. 770, June 19, 2001)

Sec. 10-2.4 Use Districts.

The following modifications and changes to the provisions of the Comprehensive Zoning Ordinance shall apply to development within the North Shore Special Planning Area, in accordance with Section 10-2.1(d)(3) of this Article.

(a) Residential District Modifications.

(1) Single-family attached and multiple-family dwellings are prohibited in the R-1, R-2, R-4 and R-6 Residential Density Districts except under the following conditions:

(A) When developed pursuant to a Federal, State or County housing program; or

(B) When located within the Princeville Visitor Destination Map identified under Article 17 (relating to Transient Vacation Rentals; Time Share Units and Time Share Plans); or

(C) When permitted by the Planning Commission through a Use Permit procedure in order to implement the housing objectives of the County.

(b) Commercial District Modifications. Subject to health, safety and building codes, commercial facilities may be carried on concurrently with residential uses within the same structure; provided, however, that the two activities occupy physically separated portions of the building and that the residential unit has visual privacy from the commercial activity.

(c) Agriculture District Modifications.

(1) Purpose. For the purposes of protecting and perpetuating agriculture uses within the North Shore Special Planning Area because of the unique cultural, economic, historic, and scenic value to the general

public, the following exceptions and amendments to the Comprehensive Zoning Ordinance are found necessary.

(2) Lands within the Agriculture District except Kuleanas.

The provisions of the Comprehensive Zoning Ordinance shall apply to all lands within the Agriculture District; provided, however, that:

(A) no more than one dwelling unit may be permitted on any parcel of record on December 27, 1974 smaller than five acres;

(B) the minimum lot size for subdivision shall be five (5) acres;

(3) Agricultural Restrictions applicable to Lumahai Valley.

In order to preserve the agricultural viability and resources of Lumahai Valley, all agriculture subdivisions shall be subject to the following requirements prior to approval:

(A) A use permit application for review by the Planning Commission.

(B) Together with the use permit application, an agriculture master plan for the valley including but not limited to proposed irrigation system, market study describing proposed crops and methods of marketing, and sale or lease arrangements for the lots including selling and lease prices.

(d) Open District Modifications Except Kuleanas.

(1) No parcel within the State Land Use Commission's Agricultural District and zoned Open District by the County within the Planning Area shall be subdivided into more than 10 lots, none of which may be smaller than 5 acres. Parcels so subdivided shall not be further resubdivided unless reclassified into the Urban District by the State Land Use Commission.

(2) Commercial Uses within the Open District (O).

Existing commercial uses and structures within the Open District (O) may be allowed to continue and if it is damaged or destroyed, such use or structures may be resumed if restoration or reconstruction is completed within (1) year from the date of such damage or destruction and provided that the general appearance and design of the building in which the use and structure or activity is conducted is maintained, the use and structure are not changed, the existing floor area is not expanded, and no other accessory commercial buildings are constructed. If reconstruction, restoration, and/or re-establishment of

the use and structure are not completed within one (1) year from the date of such damage or destruction, such use of the land and structure hereafter shall be in full conformity with the provisions of the Comprehensive Zoning Ordinance.

(e) Special Regulations Applicable to All Districts.

(1) Heights. Except as provided under Ordinance No. 416 (Flood Hazard Areas) Section 15-1.5(c)(4), height limits shall be as established in the Comprehensive Zoning Ordinance; provided, however, that no structure shall be higher than twenty-five feet unless a greater height is authorized by the Planning Commission pursuant to a use permit after review (and recommendation) by the North Shore Improvement Advisory Committee.

(2) Setbacks.

(A) Unless as otherwise provided in this section, setbacks shall be as established on the appropriate Development Plan. The Planning Director may allow minor deviations from such standards; provided, however, that:

(i) the deviations are not inconsistent with the requirements of the Comprehensive Zoning Ordinance; and,

(ii) the deviation does not substantially alter the open space and building relationships established by the Development Plan.

(B) The building setback distances for all oceanfront property shall not be less than twice the height of the building or structure measured from the oceanside grade to the highest exterior wall plate line. Such setback shall be measured from the legal shoreline as defined under the State Shoreline Setback Law. On sloping oceanfront property, greater setback may be required to avoid the intrusion of buildings onto significant view plains or vistas. No building or parking area shall be setback less than forty (40) feet from the legal shoreline in any case except that single-family detached residences are exempt from this section but must comply with the Shoreline Setback Rules and Regulations of the County of Kauai.

(C) Within the Residential and Resort District, front yard building setbacks shall not be less than one-half the height of the building measured at the grade to the highest exterior wall plate line at the side of the building facing the street or front of the property. In no case shall the front setback be less than ten feet.

(3) Access. Driveway access from public thoroughfares shall be at the general locations indicated on the Development Plan, or as approved by the Planning Director when local conditions require a different location.

(4) Subdivision. Subdivisions shall be designed in accordance with applicable provisions, if any, of Development Plans. Where so indicated on Development Plans, the planning, design and construction of more than two (2) dwelling units on any one parcel shall be in accordance with the requirements and procedures of a Project Development as established in Article 18 of the Comprehensive Zoning Ordinance.

(5) Utility Structures. The location and routes of all future utility structures other than poles not more than 40 feet high and distribution lines that are to be placed above ground level shall be approved by the Planning Commission prior to installation. The Planning Commission shall not approve such structures which:

(A) substantially affect the scenic quality of public thoroughfares, or

(B) street lights and lighting of public spaces shall be located as indicated on the Development Plans and shall be of type and design approved by the Department of Public Works and the Planning Commission.

The installation, replacement or repair of existing structures shall not require such approval.

(6) Circulation And Transportation.

(A) Alignment, right-of-way and pavement width of all public and private streets shall be as indicated on the Development Plans. All other provisions of the Comprehensive Zoning Ordinance and Subdivision Ordinance relating to public and private streets shall remain in effect.

(B) Pedestrian and bicycle trails indicated on the Development Plans adjacent to public streets shall be included in any subsequent improvement of such streets. Rights-of-way for other indicated pedestrian and bicycle trails may be acquired in lieu of dedication of park lands and facilities as provided for in the Subdivision Ordinance.

(C) Access points of private streets, parking lots and common driveways serving more than two (2) dwelling units shall be located as indicated on the Development Plans unless otherwise permitted by the Planning Commission.

(D) Public utility carriers with a capacity in excess of ten passengers shall park on

public thoroughfares only at locations designated on the Development Plans, and shall travel only on those routes indicated on the Development Plans.

(E) No helicopter or oceangoing craft shall land at any area of land within County jurisdiction except as approved by the Planning Commission except in cases of emergency. Any application for such landings shall be sent to the appropriate North Shore Improvement Advisory Committee for comments prior to action being taken, except in cases of emergency.

(F) It is desirable that the one-lane Hanalei Bridge be restored and maintained, and the County shall take this into consideration when taking any action which might affect the one-lane Hanalei Bridge.

(7) Recreational Uses.

(A) A use permit shall be required for the development of any campsite, recreation vehicle park, day use picnic area, undeveloped campground, or private recreation area intended for the use of persons other than the owners of the lands upon which such facilities are located and their guests. A use permit for such facility shall not be issued in connection with a parcel located in an area designated as "Urban" by the State Land Use Commission that is smaller than one (1) acre in size. Such uses, where permitted, shall be served by adequate sanitary and domestic water facilities as determined by the Department of Public Works, Water Department, and Health Department.

(B) No Commercial recreational use or facility shall be allowed within a residential district which increases the ambient noise level of the neighboring residential areas.

(C) The issuance and renewal of a use permit for recreational activities specified in paragraph (A) above shall require a public hearing. Such a use permit shall be valid for one year.

(8) Design Standards Applicable To Commercial Districts.

(A) Exterior Colors.

The color of the exterior surfaces of all future structures, shall be consistent with color samples approved by the North Shore Improvement Advisory Committees. Such samples shall be available for inspection by the public. Roof colors shall be non-reflective.

(B) Concrete Block Masonry.

The exposed surfaces of all concrete block masonry shall be painted.

(C) Landscaping.

(i) All development proposals shall include plans and specifications for the landscape development of the entire site.

(ii) Landscape development approved by the Planning Director shall be installed prior to the final inspection required under the building permit procedures.

(D) Parking Areas.

(i) Where the parking area is between the building and the front property line, a minimum width of five feet of planting shall be provided along the side and front property boundaries, and a minimum of three feet of planting between the parking area and the building.

(ii) Where there are two parallel rows of parking with ten or more spaces in each row, there shall be a planting island containing a shade tree at the end of each row and at intervals of from five to seven parking spaces within the rows.

(E) The Planning Commission may enact other rules and regulations related to design and aesthetics for the purpose of achieving the intent of this Article, the Development Plans and the Design Criteria Plans, and shall authorize the North Shore Improvement Advisory Committees to jointly formulate rules and regulations for the same purposes by town areas inclusive of paragraphs (A) through (E). Any rules and regulations formulated by the North Shore Improvement Advisory Committees will require adoption by the Planning Commission in order to take effect. (Ord. No. 239, December 27, 1974; Sec. 10-2.4, R.C.O. 1976; Ord. No. 349, July 1, 1978; Sec. 10-2.4, 1978 Cumulative Supplement; Ord. No. 476, June 27, 1985; Ord. No. 493, November 24, 1986)

Sec. 10-2.5 North Shore Improvement Advisory Committees.

(a) Purpose. To insure continuity of community participation in decisions affecting the future of the North Shore, to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the North Shore Planning Area.

(b) Composition. There is hereby established two (2) North Shore Improvement Advisory Committees. The Committees shall consist of at least five (5) members to be appointed

by the Mayor and confirmed by the Council. Members shall serve only for the term of the appointing authority and members shall not serve consecutive terms. Members may not be removed during their term of office. The Planning Director and the County Engineer shall be ex-officio members. For the North Shore Planning Area, there shall be two (2) Improvement Advisory Committees; the first representing Moloaa to Kalihiwai, to be called the Kilauea Improvement Advisory Committee, and the second representing Kalihiwai to Haena, to be called the Hanalei-Princeville Improvement Advisory Committee.

(c) Duties. To review and render advisory opinions on all matters referred to the Committees or matters considered by the Committees on their own initiative relative to the North Shore Development Plan area. Such matters shall include General Plan amendments, zoning amendments, and State land use boundary amendments.

(d) Standards and Criteria. The review and recommendation by the North Shore Improvement Advisory Committees shall be based upon the intent and requirements of the General Plan, the Comprehensive Zoning Ordinance, the Development Plan, and Design Plans applicable within the North Shore Planning Area.

(e) Procedures. The Committees shall meet at their own discretion at a time and place selected by the Committees. The time and place shall be public information. The meeting shall be open to the public and actions or recommendations of the Committees shall be public information.

(f) Time Limitation for Review. When a matter is referred for review and recommendation to the North Shore Improvement Advisory Committees, or when the Committees provide written notification of their intent to review matters not so referred, the applicable time limits for action established by law shall remain in effect. The time limit may be extended only upon written consent of the applicant and only for such period to which the applicant agrees. (Ord. No. 239, December 27, 1974; Ord. No. 256, June 25, 1975; Sec. 10-2.5, R.C.O. 1976; Sec. 10-2.5, 1978 Cumulative Supplement; Ord. No. 461, June 21, 1984; Ord. No. 476, June 27, 1985)

Sec. 10-2.6 Permits

(a) Requirements and Procedures. Unless otherwise provided, the permit requirements and procedures established in the Comprehensive Zoning and Subdivision Ordinance shall apply to development regulated by this Article and located in the North Shore Special Planning Area.

(b) Exemptions from this Article.

(1) Building Permits and Zoning Permits

Any building or structure authorized by a valid building or zoning permit still in force

issued prior to the effective date of this Article may be constructed if substantial construction activities related to such building or structure carried out on the site have been commenced, or are commenced within six (6) months after the effective date of this Article.

(2) Subdivisions

Proposed subdivisions that do not conform to the requirements of this Article may be treated as subdivisions existing at the effective date of this Article provided that the preliminary subdivision map was approved prior to the effective date of this Article and a final map of such subdivision is approved and recorded within one (1) year after the effective date of this Article. (Ord. No. 239, December 27, 1974; Sec. 10-2.6, R.C.O. 1976; Ord. No. 476, June 27, 1985)

Sec. 10-2.7 Enforcement, Legal Procedures, And Penalties.

Except as otherwise provided in this Article, the provisions of Article 24 of the Comprehensive Zoning Ordinance shall be applicable to the enforcement of this Article. (Ord. No. 239, December 27, 1974; Sec. 10-2.7, R.C.O. 1976; Ord. No. 476, June 27, 1985)

ARTICLE 3. HANAPEPE-ELEELE DEVELOPMENT PLAN

Sec. 10-3.1 Title And Purpose.

(a) This Article shall be known and may be cited as the "Hanapepe-Eleele Development Plan Ordinance." It is adopted:

(1) To implement the intent and purpose of the adopted General Plan and to amend certain portions of the General Plan which are found to be necessary in order to recognize more detailed information and more precise community goals and objectives.

(2) To establish development plans, zoning maps and design criteria to guide and regulate future development and protect certain physical and social characteristics which are found to be of particular public value.

(3) To establish exceptions, modifications, or additions to the provisions of the Comprehensive Zoning Ordinance and the Subdivision Ordinance of the County in order to more specifically provide for the regulation of Land Use, Subdivision and Development practice within the Hanapepe-Eleele Development Plan Area.

(4) For said purposes, the Hanapepe-Eleele Development Plan Area includes portions of the

Hanapepe-Eleele Planning Area as delineated on the Development Plan of the Hanapepe-Eleele Planning Area and zoning maps of the County, pursuant to Section 8-9.6 of the Comprehensive Zoning Ordinance.

(b) Nature of Hanapepe-Eleele Development Plan Ordinance. This Article supplements the Comprehensive Zoning and Subdivision Ordinances in regulating use and development practices and, in addition, provides a framework and guidelines to direct the physical locations and relationships of major improvements, buildings and landscape within the Hanapepe-Eleele Development Plan Area.

The Administrative Guidelines of this Article include:

(1) Development plans suggesting future and existing locations of major or critical circulation systems, access points, building area and setbacks.

(2) Design Control Plans, standards, guidelines and criteria suggesting critical design features, such as existing vegetation, historic and archaeological sites, views, lighting location and future landscape requirements.

(3) Hanapepe-Eleele Development Plan Report which served as the basis of the Plan.

(4) The Hanapepe-Eleele Citizen's Improvement Advisory Committee to serve as a continuing group for citizen participation in design review and the recommendation of proposed development and monitoring of the Hanapepe-Eleele Development Plan.

(c) Application of Regulations.

(1) In administering and applying the provisions of this Article, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Article.

(2) The regulations and procedures established in the Comprehensive Zoning Ordinance and Subdivision Ordinance shall apply within the Hanapepe-Eleele Development Plan Area, except to the extent that such regulations or procedures are changed or modified by the provisions of this Article. When the provisions of this Article differ from the provisions of the Comprehensive Zoning Ordinance or the Subdivision Ordinance with respect to a particular subject matter of regulation, the provisions of this Article shall apply. (Ord. No. 312, June 14, 1977; Sec. 10-3.1, 1978 Cumulative Supplement)

Sec. 10-3.2 Designation Of Zoning Maps.

In order to carry out the purpose of this Article, the zoning map ZM-H 200 (Hanapepe) of the CZO is hereby amended and designated as the zoning map of portions of the Hanapepe-Eleele Planning Area. Additionally, the right-of-way map for the Hanapepe Town Commercial Core is adopted and designated map ZM-H 200 R/W. (Ord. No. 312, June 14, 1977; Sec. 10-3.2, 1978 Cumulative Supplement; Ord. No. 770, June 19, 2001)

Sec. 10-3.3 Use Districts.

(a) Regulations governing the use of land shall be the same as those existing in the Comprehensive Zoning Ordinance, Chapter 8 herein, of the County, with the exceptions as noted in Section 10-3.3(b). All of the possible modifications within the Hanapepe Town Commercial Core shall be permitted only if the Planning Director finds in the specific cases that they will further the purpose of this Article.

(b) Pursuant to a valid Zoning permit application, the Planning Director may modify the standards of development, provided such modification will not adversely affect abutting property owners. It shall be the applicant's responsibility to demonstrate that no adverse effects will occur.

(1) Height and lot coverage provisions may not be modified by the Planning Director.

(2) Any modifications granted shall be of minimum departure from existing standards necessary to accomplish the purposes of this Article.

(3) A report of any such modifications granted shall be filed with the Planning Commission in writing at least once each fiscal year.

(c) Design Standards and Guidelines.

(1) There is established within the Hanapepe Town Commercial Core (as designated on the Development Plan Maps) a future right-of-way line for Hanapepe Road. The ground floor of all new buildings and those buildings seeking major structural renovations shall, if possible, incorporate a covered walkway not less than five (5) feet in width, abutting the future right- of-way line. The front wall of such buildings shall abut the walkway. A second story, if any, above the ground floor may incorporate a porch or deck over the covered walkway. Gas stations, religious facilities or any other use of structure which the Planning Director finds inappropriate may be exempted from this provision.

(2) No building within the Hanapepe Town Commercial Core shall exceed thirty-five (35) feet to roof or facade peak or three (3) stories.

(3) Exterior building surfaces which are visible from Hanapepe Road shall be of wood or incorporate wood trims where allowed by the Building Code, and where appropriate.

(4) The architectural style, design and color scheme of new buildings, renovations, additions and other improvements shall be harmonious with those presently existing.

(5) All development proposals shall include plans and specifications for the landscape development approved by the Planning Director. It shall be installed prior to the final inspection required under the Building permit procedures.

(d) The minimum standards for application for a Project Development Use permit may be diminished if the Planning Director finds the intent of this Article cannot be fulfilled by strict application of these regulations and such intent would be better served through such a Project Development Use permit. (Ord. No. 312, June 14, 1977; Sec. 10-3.3, 1978 Cumulative Supplement; Ord. No. 349, July 1, 1978)

Sec.10-3.4 Hanapepe-Eleele Improvement Advisory Committee.

(a) Purpose. To insure continuity of community participation in decisions affecting the future of the Hanapepe-Eleele Area, to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Hanapepe-Eleele Planning Area.

(b) Composition. There is hereby established the Hanapepe-Eleele Improvement Advisory Committee. The Committee shall consist of at least five (5) members to be appointed by the Mayor and confirmed by the Council. Members shall serve only for the term of the appointing authority and members shall not serve consecutive terms. Members may not be removed during their term of office. The Planning Director and the County Engineer shall be ex- officio members.

(c) Duties. To review and render advisory opinions on all matters referred to the Committee or matters considered by the Committee on its own initiative relative to the Hanapepe-Eleele Development Plan area. Such matters shall include General Plan amendments, zoning amendments, and State land use boundary amendments.

(d) Standards and Criteria. The review and recommendation by the Hanapepe-Eleele Improvement Advisory Committee shall be based upon the intent and requirements of the General Plan, the Comprehensive Zoning Ordinance, the Development Plan, and Design Plans applicable within the Hanapepe-Eleele Planning Area.

(e) Procedures. The Committee shall meet at its own discretion at a time and place selected by the Committee. The time and place shall be public information. The meeting shall be open to the public and actions or recommendations of the Committee shall be public information.

(f) Time Limitation for Review. When a matter is referred for review and recommendation to the Hanapepe-Eleele Improvement Advisory Committee, or when the Committee provides written notification of its intent to review

matters not so referred, the applicable time limits for action established by law shall remain in effect. The time limit may be extended only upon written consent of the applicant and only for such period to which the applicant agrees. (Ord. No. 312, June 14, 1977; Sec. 10-3.4, 1978 Cumulative Supplement; Ord. No. 461, June 21, 1984)

Sec. 10-3.5 Review Of Hanapepe-Eleele Development Plan.

The Commission shall review the Hanapepe-Eleele Development Plan and Program at least every five (5) years, and shall initiate any appropriate changes or amendments which are brought about by changes in social, fiscal, economic or other factors. (Ord. No. 312, June 14, 1977; Sec. 10-3.5, 1978 Cumulative Supplement)

Sec. 10-3.6 Adoption Of Zoning Maps.

The Hanapepe-Eleele Development Plan Maps are incorporated and adopted as the revised zoning maps for the Hanapepe-Eleele area, indicating the permitted uses thereon for the respective areas. (Ord. No. 312, June 14, 1977; Sec. 10-3.6, 1978 Cumulative Supplement)

ARTICLE 4. WAIMEA-KEKAHA REGIONAL DEVELOPMENT PLAN

Sec. 10-4.1 Title And Purpose.

(a) This Article shall be known and may be cited as the "Waimea-Kekaha Regional Development Plan Ordinance." It is adopted:

(1) To implement the intent and purpose of the adopted Kauai General Plan and to amend certain portions of that Plan to recognize more detailed information and more precise community goals and objectives.

(2) To establish development plans, general land use maps, zoning maps, and design criteria to guide and regulate future development and protect certain physical and social characteristics which are found to be of particular public value.

(3) To establish exceptions, modifications or additions to the provisions of the Comprehensive Zoning Ordinance of the County in order to more specifically provide for the regulations of land use and development practices within the Waimea-Kekaha Region.

(b) Nature of Waimea-Kekaha Regional Development Plan Ordinance.

(1) This Article supplements the Kauai General Plan and the Comprehensive Zoning Ordinance by regulating use and development practices to direct the physical locations and relationships of major improvements and to provide guidelines for buildings and landscape within the Waimea-Kekaha Region as

defined in Figure 1 of the Waimea-Kekaha Regional Development Plan Report. The final draft of the Waimea-Kekaha Regional Development Plan Report is adopted as the administrative guidelines which serve as the basis of the Regional Development Plan and the Project and Redevelopment Districts.

(2) The goals and objectives of the Waimea-Kekaha Regional Development Plan are adopted by reference. Copies of the Development Plan Report and goals and objectives are on file at the County Clerk's Office and the Planning Department.

(c) Application of Regulations.

(1) In administering and applying the provisions of this Article, unless otherwise stated, they shall be held to the minimum requirements necessary to accomplish the purpose of this Article.

(2) The regulations and procedures established in the Comprehensive Zoning and Subdivision Ordinances shall apply within the Waimea-Kekaha Region, except to the extent that such regulations or procedures are changed or modified by the provisions of this Article. When the provisions of this Article differ from the provisions of the Comprehensive Zoning Ordinance or the Subdivision Ordinance with respect to a particular subject matter or regulation, the provisions of this Article shall apply. (Ord. No. 325, September 9, 1977; Sec. 10-4.1, 1978 Cumulative Supplement)

Sec. 10-4.2 Designation Of Zoning Map.

In order to carry out the purpose of this Article, zoning maps ZM-W 100 (Waimea) and ZM-K 100 (Kekaha) of the CZO are amended and designated as the zoning maps for the Waimea-Kekaha Area. (Ord. No. 325, September 9, 1977; Sec. 10-4.2, 1978 Cumulative Supplement; Ord. No. 770, June 19, 2001)

Sec. 10-4.3 Waimea-Kekaha Project And Redevelopment Districts.

(a) Within the project and redevelopment districts shown on The Waimea Planning Area General Land Use Plan on file with the Planning Department, the provisions relating to Project Development in Article 18 of the Comprehensive Zoning Ordinance shall apply, with the following exceptions:

(1) Kikiaola-Knudsen Land Between Waimea and Kekaha Project District. This district shall be used for agriculture, recreation, residential and other purposes in accordance with the existing Use Districts until a Use Permit for a Project Development and a Class IV Zoning Permit is issued providing for planned community expansion of Waimea and Kekaha into the Project District. This expansion may include Residential, Commercial, Industrial, Resort, Open and other uses. Appropriate new

Use Districts shall be adopted along with the Project Development.

(2) Kekaha Redevelopment District. This district shall be used for Residential and related purposes in accordance with a phased, planned redevelopment of the existing Residential uses. Appropriate new Use Districts may be adopted along with the Project Development.

(3) Community Considerations. In addition to the provisions of the Comprehensive Zoning Ordinance, the applicant shall demonstrate that the proposed development will create long term employment opportunities for residents of the Waimea-Kekaha Region or provide for other major community needs specified in the Development Plan Report.

(4) Other Redevelopments Through Project Development. The Planning Commission shall find that in cases where the intent of the Waimea-Kekaha Regional Development Plan cannot be met because of parcel size orientation, shape, lack of adequate utilities, street improvements, etc., the parcel or parcels so affected shall be developed in accordance with a Project Development Plan to be initiated either by the property owner or owners, or by the Planning Commission. Where the project involves participation by Federal, State or County Agencies such as under the Federal or State Housing Act, or the Improvement District Statutes, the Plan shall be ratified by the County Council prior to government funding. (Ord. No. 325, September 9, 1977; Sec. 10-4.3, 1978 Cumulative Supplement)

Sec. 10-4.4 Waimea Urban Design District

(This section is reserved for special urban design standards defined by the Kauai Urban Design Plan.) (Ord. No. 325, September 9, 1977; Sec. 10-4.4, 1978 Cumulative Supplement)

Sec. 10-4.5 Waimea Visitor Center Concept.

To provide a site for tourists and island residents alike to acquaint themselves with the rich historical and archaeological heritage of Waimea, and to coincide with the Hawaiian Bicentennial activities, the concept of a Waimea Visitor Center is adopted. A study shall be conducted to establish a feasible site and such study shall be based upon, but not limited to pertinent economic criteria and locational considerations including visitor routes, bus waiting time, existing structures, and planned or potential structures. (Ord. No. 325, September 9, 1977; Sec. 10-4.5, 1978 Cumulative Supplement)

Sec. 10-4.6 Waimea-Kekaha Improvement Advisory Committee.

(a) Purpose. To insure continuity of community participation in decisions affecting the future of the Waimea-Kekaha Area, to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Waimea-Kekaha Planning Area.

(b) Composition. There is hereby established the Waimea-Kekaha Improvement Advisory Committee. The Committee shall consist of at least five (5) members to be appointed by the Mayor and confirmed by the Council. Members shall serve only for the term of the appointing authority and members shall not serve consecutive terms. Members may not be removed during their term of office. The Planning Director and the County Engineer shall be ex-officio members.

(c) Duties. To review and render advisory opinions on all matters referred to the Committee or matters considered by the Committee on its own initiative relative to the Waimea-Kekaha Development Plan area. Such matters shall include General Plan amendments, zoning amendments, and State land use boundary amendments.

(d) Standards and Criteria. The review and recommendation by the Waimea-Kekaha Improvement Advisory Committee shall be based upon the intent and requirements of the General Plan, the Comprehensive Zoning Ordinance, the Development Plan, and Design Plans applicable within the Waimea-Kekaha Planning Area.

(e) Procedures. The Committee shall meet at its own discretion at a time and place selected by the Committee. The time and place shall be public information. The meeting shall be open to the public and actions or recommendations of the Committee shall be public information.

(f) Time Limitation for Review. When a matter is referred for review and recommendation to the Waimea-Kekaha Improvement Advisory Committee, or when the Committee provides written notification of its intent to review matters not so referred, the applicable time limits for action established by law shall remain in effect. The time limit may be extended only upon written consent of the applicant and only for such period to which the applicant agrees.

(g) Review of Waimea-Kekaha Development Plan. The Commission shall review the Waimea-Kekaha Regional Development Plan at least every five (5) years, and shall initiate appropriate amendments which are brought about by changes in social, physical, economic or other factors. (Ord. No. 325, September 9, 1977; Sec. 10-4.6, 1978 Cumulative Supplement; Ord. No. 461, June 21, 1984)

ARTICLE 5. LIHUE DEVELOPMENT PLAN

Sec. 10-5.1 Title And Purpose.

(a) This Article shall be known and may be cited as the "Lihue Development Plan Ordinance." It is adopted:

(1) To implement the intent and purpose of the adopted General Plan and to amend or refine certain portions of the General Plan which are found to be necessary in order to recognize more detailed information and more precise community goals and objectives.

(2) To establish development plans, zoning maps and design criteria to guide and regulate future development and protect certain physical and social characteristics which are found to be of particular public value.

(3) To establish exceptions, modifications or additions to the provisions of the Comprehensive Zoning Ordinance and the Subdivision Ordinance of the County in order to more specifically provide for the regulation of Land Use, Subdivision and Development practices within the Special Planning Area, hereinafter referred to as the "Lihue Town Core Special Area", of the Lihue Planning Area.

(4) For said purposes, the location of the Lihue Town Core Special Area is as delineated on the Lihue Development Plan of the Lihue Planning Area and zoning maps of the County, pursuant to Section 8-9.6 of the Comprehensive Zoning Ordinance.

(b) Goals and Objectives.

(1) The following goals and objectives are in addition to those of the County General Plan and they are listed in order of priority from most to least important. In concluding the Lihue Development Plan, it was felt that as overall goals it is important to:

(A) Preserve the Kauai Lifestyle, which is generally agreed to be characterized by frequent contact with the outdoors, especially with the sea, a friendliness and openness, a relatively relaxed pace, wide open spaces and greenery, a sense of community and a concern for each other; and

(B) Structured development of the planning area so that the various functions reinforce each other and work in harmony.

(C) Guide the development of the Lihue area so that it develops harmoniously with the rest of the island.

(c) The Specific Goals and Objectives Are:

(1) GOAL: Enhance and Protect the Civic Center.

OBJECTIVES:

(A) Develop a Civic Center Master Plan which accommodates future needs and reinforces qualities of convenience, pedestrian accessibility, garden-like setting, and architectural compatibility with important buildings in the Civic Center vicinity.

(B) Provide for Civic Center growth.

(C) Insure that the design of future Civic Center improvements reflect a consistent approach compatible with the image of Kauai as the Garden Island.

(D) Incorporate the Cultural Center into the Civic Center Master Plan.

(2) GOAL: Develop Lihue as a More Active and Competitive Commercial, Business and Financial Center.

OBJECTIVES:

(A) Encourage greater centralization of such activities.

(B) Simplify and improve circulation systems within the Center.

(C) Encourage use of present commercial zoned land for future expansion of the Center.

(D) Encourage revitalization of existing, compatible facilities.

(3) GOAL: Improve Economic Conditions.

OBJECTIVES:

(A) Promote more and better job opportunities.

(B) Promote economic diversification.

(C) Optimize use of present human and economic resources.

(4) GOAL: Preserve Agriculture.

OBJECTIVES:

(A) Determine what areas can and should remain in agriculture.

(B) Discourage fragmentation of agricultural lands.

(C) Encourage development of various agricultural pursuits.

(5) GOAL: Improve Health and Safety.

OBJECTIVES:

(A) Solve long-range sewage disposal problems.

(B) Encourage development of more water sources, to support present and planned activities.

(C) Develop a Lihue Drainage Master Plan.

(D) Provide an efficient and safe traffic circulation system.

(6) GOAL: Improve the General Appearance of Lihue.

OBJECTIVES:

(A) Provide for mini parks in specific areas.

(B) Provide for landscaping of public areas.

(C) Encourage rehabilitation of existing buildings.

(D) Beautify important roadways (such as Ahukini Road.)

(E) Promote enforcement of Anti-Litter Laws.

(7) GOAL: Improve Housing Conditions.

OBJECTIVES:

(A) Encourage adequate housing which will meet the needs of all sectors of the population.

(B) Promote construction of attached-type dwelling units to conserve land and encourage affordable prices.

(C) Encourage protection of residential areas from traffic dust and noise and from adverse effects of uses from adjacent commercial, industrial and agricultural properties.

(8) GOAL: Improve and Expand Higher Education.

OBJECTIVES:

(A) Increase use of existing school facilities.

(B) Seek support for research and educational projects.

(C) Foster interaction between the community college and other community organizations.

(9) GOAL: Improve Transportation.

OBJECTIVES:

(A) Provide for more port-oriented activity.

(B) Provide bicycle systems.

(C) Encourage mass transit.

(D) Reinforce the County General Plan recommendations for a north-south runway at Lihue Airport.

(10) GOAL: Promote Recreational Opportunities For All Segments Of The Population.

OBJECTIVES:

(A) Recommend an indoor sports facility be included in the Lihue Stadium Complex Master Plan.

(B) Insure appropriate and adequate shoreline and mountain access.

(11) GOAL: Encourage Opportunities In Culture And Art For All Segments Of the Community.

(d) Nature of Lihue Development Plan Ordinance. This Article supplements the Comprehensive Zoning and Subdivision Ordinances in regulating use and development practices and, in addition, provides a framework and guidelines to direct the physical locations and relationships of major improvements, buildings and landscape within the Lihue Town Core Special Area of the Lihue Planning Area.

The Administrative Guidelines of this Article include:

(1) Development plans suggesting future and existing locations of major or critical circulation systems, access points, building area and setbacks, recommended uses and densities, major existing trees to be preserved, proposed trees, and building envelopes.

(2) Illustrative plan showing buildings, landscape, and other improvements as they would appear if the Plan is fully realized.

(3) The report titled "Lihue Development Plan" which served as the basis of the Plan.

(4) The Lihue Improvement Advisory Committee to insure continuity of community participation in decisions affecting the future of the Lihue Planning Area; to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Lihue Planning Area.

(e) Application of Regulations.

(1) In administering and applying the provisions of this Article, unless otherwise stated, they shall be held to the minimum requirements necessary to accomplish the purpose of this Article.

(2) Unless otherwise expressly prohibited by law, the provisions of this Article shall apply to the Lihue Town Core Special Area as described herein within the Lihue Planning Area.

(3) The regulations and procedures established in the Comprehensive Zoning and Subdivision Ordinances shall apply within the Lihue Planning Area, except to the extent that these regulations or procedures are changed or modified by the provisions of this Article. When the provisions of this Article differ from the provisions of the Comprehensive Zoning Ordinance or the Subdivision Ordinance with respect to a particular subject matter of regulations, the provisions of this Article shall apply. (Ord. No. 335, November 29, 1977; Sec. 10-5.1, 1978 Cumulative Supplement)

Sec. 10-5.2 Designation Of Zoning Maps.

In order to carry out the purpose of this Article, the zoning maps ZM-LI 400 (Lihue), ZM-NW 400 (Nawiliwili), and ZM-HM 400 (Hanamaulu) of the CZO are amended and designated as the zoning map of portions of the Lihue Planning Area. (Ord. No. 335, November 29, 1977; Sec. 10-5.2, 1978 Cumulative Supplement; Ord. No. 770, June 19, 2001)

Sec. 10-5.3 Use Districts.

The following modifications and changes to the provisions of Articles 3 to 8 of the Comprehensive Zoning Ordinance shall apply to development within the Lihue Town Core Special Area in accordance with Section 10-5.1(e)(3) of this Article.

(a) Commercial District. Development Standards for Commercial Development. All Commercial construction, development or use shall be carried out in accordance with the standards established in the Comprehensive Zoning Ordinance with the following exceptions:

(1) Off-Street Parking. When parcels are developed or redeveloped in full conformity to the Lihue Town Core Special Area Development Guidelines as noted on pages 16 to 20a of the Lihue Development Plan Report, the following modifications may be permitted:

(A) For all retail sales: One parking space for every four hundred (400) square feet of gross floor space, plus one (1) space for every three (3) employees.

(B) For offices and office buildings: One (1) parking space for every four hundred (400) square feet of net office space and waiting rooms, plus one (1) space for every three (3) employees.

(C) Parking for other uses shall be in accordance to the Comprehensive Zoning Ordinance.

(D) Where access ways are provided as shown on the Development Plan, a reduction in parking shall be permitted to one (1) space for every five hundred fifty (550) square feet of leasable floor space that could have been most likely utilized by the space occupied by the access way driveway.

(E) All Commercial developments utilizing the modified parking requirements shall not restrict the access ways and parking areas but shall be made available to shoppers within the Lihue Town Core Special Area.

(2) Master Development Plans. Except for minor type improvements, all development proposals shall be accompanied by master development plans for the lot or lots upon which the improvements are to be made. Such master plans are to conform, whenever possible, to provisions of the Development Plan.

(b) Project Development Districts. In order to carry out the purpose of this Article within the Project District 1, 2, and 3 as shown on page 12 of the Lihue Development Plan Report the provisions relating to Project Development in Article 18 of the Comprehensive Zoning Ordinance and the Lihue Development Plan Report shall apply when the areas are appropriate and timely for urban development. (Ord.

No. 335, November 29, 1977; Sec. 10-5.3, 1978 Cumulative Supplement)

Sec. 10-5.4 Lihue Improvement Advisory Committee.

(a) Purpose. To insure continuity of community participation in decisions affecting the future of the Lihue Improvement Advisory Committee to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Lihue Planning Area.

(b) Composition. There is hereby established the Lihue Improvement Advisory Committee. The Committee shall consist of at least five (5) members to be appointed by the Mayor and confirmed by the Council. Members shall serve only for the term of the appointing authority and members shall not serve consecutive terms. Members may not be removed during their term of office. The Planning Director and the County Engineer shall be ex-officio members.

(c) Duties. To review and render advisory opinions on all matters referred to the Committee or matters considered by the Committee on its own initiative relative to the Lihue Development Plan area. Such matters shall include General Plan amendments, zoning amendments, and State land use boundary amendments.

(d) Standards and Criteria. The review and recommendation by the Lihue Improvement Advisory Committee shall be based upon the intent and requirements of the General Plan, the Comprehensive Zoning Ordinance, the Development Plan, and Design Plans applicable within the Lihue Planning Area.

(e) Procedures. The Committee shall meet at its own discretion at a time and place selected by the Committee. The time and place shall be public information. The meeting shall be open to the public and actions or recommendations of the Committee shall be public information.

(f) Time Limitation for Review. When a matter is referred for review and recommendation to the Lihue Improvement Advisory Committee, or when the Committee provides written notification of its intent to review matters not so referred, the applicable time limits for action established by law shall remain in effect. The time limit may be extended only upon written consent of the applicant and only for such period to which the applicant agrees. (Ord. No. 335, November 29, 1977; Sec. 10-5.4, 1978 Cumulative Supplement; Ord. No. 461, June 21, 1984)

Sec. 10-5.5 Review Of Lihue Development Plan.

The Commission shall review the Lihue Development Plan and program at least every five (5) years, and shall initiate any appropriate changes or amendments which are brought about by changes in social, fiscal, economic or

Other factors. (Ord. No. 335, November 29, 1977; Sec. 10-5.5, 1978 Cumulative Supplement)

Sec. 10-5.6 Permits.

Unless otherwise provided, the permit requirements and procedures established in the Comprehensive Zoning Ordinance and Subdivision Ordinance shall apply to development regulated by this Article and located in the Lihue Town Core Special Area. (Ord. No. 335, November 29, 1977; Sec. 10-5.6, 1978 Cumulative Supplement)

Sec. 10-5.7 Enforcement, Legal Procedures And Penalties.

Except as otherwise provided in this Article, the provisions of Article 24 of the Comprehensive Zoning Ordinance shall be applicable to the enforcement of this Article. (Ord. No. 335, November 29, 1977; Sec. 10-5.7, 1978 Cumulative Supplement)

ARTICLE 6. KOLOA-POIPU-KALAHEO DEVELOPMENT PLAN

Sec. 10-6.1 Title, Purpose, And General Provisions.

(a) This Article shall be known and may be cited as "the Koloa-Poipu-Kalaheo Development Plan Ordinance." It is hereby adopted:

(1) To implement the intent and purpose of the adopted Kauai General Plan and to amend or refine certain portions of the General Plan which are found to be necessary in order to recognize more detailed information and more precise community goals and objectives.

(2) To establish development plans, general land use maps, zoning maps, and design criteria to guide and regulate future development and protect certain physical and social characteristics which are found to be of particular public value.

(3) To establish exceptions, modifications or additions to the provisions of the Comprehensive Zoning Ordinance and the Subdivision Ordinance of the County of Kauai in order to more specifically provide for the regulations of land use and development practices within the Koloa-Poipu-Kalaheo Planning Area.

(4) For said purposes, the Koloa-Poipu-Kalaheo Planning Area includes the majority of Koloa Judicial District extending from the Hoary Head Range to Kalaheo Gulch as delineated on maps on file with the Planning Department, County of Kauai.

(b) Goals and Objectives. The "Goals and Objectives" contained within the Koloa-Poipu-Kalaheo Development Plan Report and described below are hereby adopted by reference. The Development Plan Report is on file at the Office of the Planning Department.

The following goals and objectives were developed for the Koloa Planning Area by the County Planning Department, their consultants, and the Koloa-Poipu-Kalaheo Development Plan Citizens Advisory Committee (CAC):

(1) Natural Features. Develop more specific than present County, State and Federal regulations if necessary for the use and/or control of steeply sloping lands, shoreline, flood plain areas, and other constraint areas.

(2) Environmental Determinants. Encourage development in existing communities, least environmentally sensitive areas, non-agricultural areas, and areas outside constraint districts.

(3) History and Archaeology.

(A) Increase the body of knowledge about and the public's understanding of the area's history and archaeology.

(B) Develop a program for its use and preservation.

(4) Subarea Distinctions, Settlement Patterns, Population.

(A) Encourage continued identification and integrity of each area community's unique identity, including physical, social and architectural.

(B) Limit and/or accommodate growth in population (resident and de-facto) in accordance with overall growth objectives.

(5) Flooding, Tsunami, Coastal Waters, Beaches.

(A) Improve drainage to alleviate flood hazards.

(B) Encourage uses and a development pattern and/or controls which enhance and protect coastal waters and beaches, and encourage construction of structures which do not promote flood and tsunami dangers.

(6) Employment and Industry.

(A) Develop programs for orienting and educating area residents about available industry opportunities and skill requirements.

(B) Develop skill education programs related to available industry opportunities.

(C) Develop programs to inform visitors about area laws, customs, amenities, communities, and sources of further information and/or help.

(D) Encourage development of visitor facilities which best benefit residents and visitors.

(E) Increase job opportunities.

(F) Encourage new industries, consistent with other community goals.

(G) Direct infrastructure for overall best benefit.

(7) Housing.

(A) Develop housing guidelines which are aimed at achieving a balance of housing types, architectural style, size, and price mix to meet housing needs.

(B) Encourage subsidized housing for low-income families through incentives to private developers and/or rental supplements to needy tenants, and/or government-sponsored housing projects.

(C) Use State lands for housing.

(8) Recreation.

(A) Determine what daytime and nighttime activities are desired by residents and visitors and encourage their development.

(B) Develop specific programs for the proper maintenance and use of each park and recreation area.

(C) Develop a plan for public access to coastal and mauka areas where private properties block such access.

(D) Acquire coastal areas for public use.

(E) Use the Parks and Recreation Master Plan to identify areas for park expansion and new parks.

(9) Visual Resources. Determine visual resource priorities and plan for their preservation and/or development.

(10) Social Resources and Activities.

(A) General. Find out how people feel about various pertinent issues.

(B) Specific.

(i) Education. Encourage educational programs and facilities that will meet changing needs of all age groups and engender realistic and tolerant attitudes and values.

(ii) Health. Encourage health services and facilities which promote better health maintenance along with necessary treatment services.

(iii) Safety. Develop a crime prevention and protection program that will improve the security of residents and visitors.

(a) Encourage more effective community-wide inspection and compliance with fire prevention and safety regulations in order to reduce risks of losses from fires.

(b) Provide a program for all aspects of emergency services.

(iv) Community Well-Being. Strengthen social services and provide facilities to assist families in dealing with marital disorders, improving parent-child relationships, protection of children, and arranging early referral of delinquency-prone juveniles.

(v) Culture and the Arts. Foster more community-based support and participation in culture and the arts.

(11) Transportation and Circulation.

(A) Improve roadway patterns and linkages at points of congestion and areas of future growth.

(B) Encourage alternate transport systems which lessen congestion and conserve resources.

(12) Land Use.

(A) Consolidate urban growth in existing communities, where possible.

(B) Reinforce existing land use patterns. Where necessary, reserve new areas for future growth.

(C) Evaluate community desires and accommodate them as reasonable.

(13) General Plan and Zoning. Revise the General Plan and County Zoning as necessary to match projected needs in accordance with community desires.

(14) Public Facilities.

(A) Encourage development of roads, sewerage, water facilities, drainage improvements and other public facilities necessitated by existing uses and proposed growth.

(B) Encourage development of parks and cultural facilities.

(c) Nature Of Koloa-Poipu-Kalaheo Development Plan Ordinance. This Article supplements the Comprehensive Zoning and Subdivision Ordinances in regulating use and development practices and, in addition, provides a framework and guidelines to direct the physical location and relationships of major improvements, traffic circulation systems, buildings and landscape within the Koloa-Poipu-Kalaheo Planning Area. The Guidelines of this Ordinance include:

(1) Development Plans showing existing locations, as well as possible future locations, of major or critical circulation systems and intersections, and recommended uses and densities.

(2) Illustrative Plans for portions of the Koloa and Kalaheo town areas showing buildings, landscape, and other improvements as they would appear if the Plan is fully realized.

(3) The report titled "Koloa-Poipu-Kalaheo Development Plan" which served as the basis of the Plan.

(4) The Koloa-Poipu-Kalaheo Improvement Advisory Committee to insure continuity of community participation in decisions affecting the future of the Koloa-Poipu-Kalaheo Planning Area; to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Planning Area.

(d) Application of Regulations.

(1) In administering and applying the provisions of this Article, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Article.

(2) The regulations and procedures established in the Comprehensive Zoning and Subdivision Ordinances shall apply within the Koloa-Poipu-Kalaheo Planning Area, except to the extent that such regulations or procedures are changed or modified by the provisions of this Article. When the provisions of this Article differ from the provisions of the Comprehensive Zoning Ordinance or the Subdivision Ordinance with respect to a particular subject matter or regulation, the provisions of this Article shall apply. (Ord. No. 447, February 22, 1983)

Sec. 10-6.2 Amendments To General Plan Land Use Map And Zoning Maps.

In order to carry out the purposes of this Article, the General Plan Land Use Map and the Zoning Maps of the Comprehensive Zoning Ordinance are hereby amended as described in Attachment "B" of Ordinance No. 447 and on file with the Planning Department, County of Kauai. (Ord. No. 446, February 22, 1983; Ord. No. 447, February 22, 1983).

Sec. 10-6.3 Special Provisions Applicable To The Koloa-Poipu-Kalaheo Planning Area.

The following provisions establish exceptions, modifications or additions to the General Plan, zoning and subdivision ordinances as it applies to the Koloa-Poipu-Kalaheo Planning Area.

(a) Vehicular Circulation. The intent of the vehicular circulation element of the Koloa-Poipu-Kalaheo Development Plan is to identify the existing circulation system and to propose possible locations for future additions to the circulation system in order to facilitate the planning of a long-range comprehensive system of coordinated traffic facilities.

(b) Open District Modifications. No parcel within the State Land Use Commission's Agricultural District and zoned Open District by the County within the Planning Area shall

be subdivided into more than 10 lots, none of which may be smaller than 5 acres. Parcels so subdivided shall not be further resubdivided unless reclassified into the Urban District by the State Land Use Commission.

(c) Limitations of Development Within Significant Constraint Areas. The Planning Commission shall have the authority to further regulate and control subdivisions or developments in land areas that are subject to significant physical constraints such as flooding, erosion, slopes, etc., in order to preserve and protect public health, safety and welfare.

(d) Koloa Town Core, Special Treatment-Cultural/Historic (ST-C) District.

(1) The area within the boundary delineated on the Koloa Zoning Map is hereby designated as the Koloa Town Core, Special Treatment-Cultural/Historic (ST-C) District.

(2) The creation of this Special Treatment District is intended to provide a mechanism to maintain and enhance the character and charm of this historic plantation community.

(3) As a prerequisite to any zoning amendment petition within the Koloa Town Core, all major landowners shall design a detailed master plan for its landholdings showing urban design standards for buildings and structures, lighting, walkways, landscaping, parking and accessways.

(4) The requirements and procedures outlined in Section 8-9.5 of the Comprehensive Zoning Ordinance shall apply to all applications for development within the Koloa Town Core, Special Treatment-Cultural/Historic District.

(e) Building Setback Distances.

(1) The building setback distances for all oceanfront property shall not be less than twice the height of the building or structure measured from the oceanside grade to the highest exterior wall plate line. Such setback shall be measured from the legal shoreline as defined under the State Shoreline Setback Law. No building or parking area shall be set back less than forty feet from the legal shoreline in any case except that single-family detached residences are exempt from this section but must comply with the Shoreline Setback Rules and Regulations of the County of Kauai.

(2) Within the Residential and Resort District, front yard building setbacks shall not be less than one-half the height of the building measured at the grade to the highest exterior wall plate line at the side of the building facing the street or front of the property. In no case shall the front setback be less than ten feet.

(f) Project Development Districts.

(1) In order to carry out the purposes of this ordinance the provisions of Article 18 of the Comprehensive Zoning Ordinance and the Koloa-Poipu-Kalaheo Development Plan Report shall apply to all Project Development Districts when the areas are appropriate and timely for urban development.

(2) Project Development District Designations are as follows and are designated by location in the zoning maps for the Planning Area:

PD - R	Project District	-	Residential
PD - RR	Project District	-	Resort
PD - C	Project District	-	Commercial
PD - RC	Project District	-	Recreation

(g) Other Provisions.

(1) All new resort residential development or expansion of existing resort residential development along the shoreline shall provide public parking proportionate to the rooms on the sliding scale as developed by the Planning Commission. Such parking shall be in addition to other parking requirements and shall be convenient to public beach access. The Planning Commission may waive such parking if it is found that sufficient public parking already exists in the near vicinity.

(2) Hotel rooms which are designed and/or equipped to provide kitchen facilities for the preparation and/or serving of meals shall not be considered hotel rooms for the purposes of calculating allowable densities and parking requirements. (Ord. No. 447, February 22, 1983; Ord. No. 475, May 7, 1985)

Sec.10-6.4 Koloa-Poipu-Kalaheo Improvement Advisory Committee.

(a) Purpose. To insure continuity of community participation in decisions affecting the future of the Koloa-Poipu-Kalaheo Area, to provide for the review of development proposals and to implement the intent of the plans and regulations governing development within the Koloa-Poipu-Kalaheo Planning Area.

(b) Composition. There is hereby established the Koloa-Poipu-Kalaheo Improvement Advisory Committee. The Committee shall consist of at least six (6) members to be appointed by the Mayor and confirmed by the Council. Members shall serve only for the term of the appointing authority and members shall not serve consecutive terms. Members may not be removed during their term of office. The Planning Director and the County Engineer shall be ex-officio members.

(c) Duties. To review and render advisory opinions on all matters referred to the Committee or matters considered by the Committee on its own initiative relative to the

Koloa-Poipu-Kalaheo Development Plan area. Such matters shall include General Plan amendments, zoning amendments, and State land use boundary amendments.

(d) Standards and Criteria. The review and recommendation by the Koloa-Poipu-Kalaheo Improvement Advisory Committee shall be based upon the intent and requirements of the General Plan, the Comprehensive Zoning Ordinance, the Development Plan, and Design Plans applicable within the Koloa-Poipu-Kalaheo Planning Area.

(e) Procedures. The Committee shall meet at its own discretion at a time and place selected by the Committee. The time and place shall be public information. The meeting shall be open to the public and actions or recommendations of the Committee shall be public information.

(f) Time Limitation for Review. When a matter is referred for review and recommendation to the Koloa-Poipu-Kalaheo Improvement Advisory Committee, or when the Committee provides written notification of its intent to review matters not so referred, the applicable time limits for action established by law shall remain in effect. The time limit may be extended only upon written consent of the applicant and only for such period to which the applicant agrees. (Ord. No. 447, February 22, 1983; Ord. No. 461, June 21, 1984)

Sec.10-6.5 Review Of Koloa-Poipu-Kalaheo Development Plan.

The Commission shall review the Koloa-Poipu-Kalaheo Development Plan and program when deemed appropriate and timely and shall initiate any appropriate changes or amendments which are brought about by changes in social, fiscal, economic, or other factors. (Ord. No. 447, February 22, 1983)

Sec. 10-6.6 Permits.

(a) Requirements and Procedures. Unless otherwise provided, the permit requirements and procedures established in the Comprehensive Zoning Ordinance and Subdivision Ordinance shall apply to development regulated by this Article and located in the Koloa-Poipu-Kalaheo Area.

(b) Exemptions from this Article.

(1) Building Permits and Zoning Permits. Any building or structure authorized by a valid building or zoning permit still in force issued prior to the effective date of this Article may be constructed if substantial construction activities related to such building or structure carried out on the site have been commenced, or are commenced within six (6) months after the effective date of this Article.

(2) Subdivisions. Proposed subdivisions that do not conform to the requirements of this Article may be treated as subdivisions existing at the effective

date of this Article provided that the preliminary subdivision map was approved prior to the effective date of this Article and a final map of such subdivision is approved and recorded within one (1) year after the effective date of this Article.

(3) Inapplicability To Certain Zoning And General Plan Amendments. This Article shall not be construed to apply to any portions of Ordinance Nos. PM-90-82, PM-91-82, PM-98-82, PM-99-82, and PM-102-82 that may be in conflict with the provisions of this Article. However, this Article will apply to Ordinance Nos. PM-90-82, PM-91-82, PM-98-82, PM-99-82, and PM-102-82 in all other respects. (Ord. No. 447, February 22, 1983)

Sec. 10-6.7 Enforcement, Legal Procedures, And Penalties.

Except as otherwise provided in this Article, the provisions of Article 24 of the Comprehensive Zoning Ordinance shall be applicable to the enforcement of this Article. (Ord. No. 447, February 22, 1983)

CHAPTER 11

STATE LAND USE DISTRICT BOUNDARY AMENDMENT ORDINANCE

(The purpose of this Chapter is to establish procedures for the reclassification of State Land Use District Boundaries involving lands fifteen (15) acres or less in size located in the State Land Use Agricultural, Rural, or Urban Districts.)

ARTICLE 1. GENERAL PROVISIONS

Sec. 11-1.1 Title.

This Chapter shall be known, and may be cited, as the "State Land Use District Boundary Amendment Ordinance" and its official abbreviation shall be the "SLUD Boundary Amendment Ordinance." (Ord. No. 492, October 31, 1986)

Sec. 11-1.2 Purpose.

This Chapter is adopted for the purpose of:

(a) Implementing the intent and purpose of Section 205-3.1 of the Hawaii Revised Statutes, which delegates to the respective counties of the State of Hawaii the authority to process and determine petitions for State Land Use District Boundary amendments involving lands fifteen (15) acres or less in size located in the State Land Use Agricultural, Rural, or Urban Districts;

(b) Preserving and protecting lands in the County by limiting the development of such lands to those uses for which these lands are best suited in order to promote and protect the public health and welfare;

(c) Reducing processing time for, costs to, and duplication of effort by, applicants for State Land Use District Boundary amendments for such lands;

(d) Establishing procedures for the processing of applications for State Land Use District Boundary amendments involving such lands; and

(e) Insuring that all such State Land Use District Boundary amendments conform to the decision-making criteria contained in Section 205-17 of the Hawaii Revised Statutes. (Ord. No. 492, October 31, 1986)

Sec. 11-1.3 Definitions.

The definitions of words and phrases contained in Chapter 8 (Comprehensive Zoning Ordinance), Sec. 8-1.5, R.C.O. 1976, as amended from time to time, shall apply equally to this Chapter. (Ord. No. 492, October 31, 1986)

ARTICLE 2. APPLICATION PROCESS

Sec. 11-2.1 Applicant.

Any department or agency of the State of Hawaii or of the County of Kauai, or the owner of the property sought to be reclassified or his authorized representative, may file an application for a State Land Use District Boundary Amendment with the Planning Director. The County Council may, by resolution, refer an application for reclassification to the Planning Director for evaluation and processing in the same manner as any other application. (Ord. No. 492, October 31, 1986)

Sec. 11-2.2 Limitation On Reclassification.

Applications for reclassification shall be limited to boundary changes of lands fifteen (15) acres or less in size presently located in the State Land Use Agricultural, Rural, or Urban Districts. This Chapter shall not be used to transfer lands either into, or out of, the State Land Use Conservation District. This Chapter shall not apply to requests for reclassification of any parcel of land, or any combinations of contiguous parcels in common ownership, which would result in the reclassification of greater than fifteen (15) acres within any five (5) year period of time. In cases where further development beyond the initial fifteen (15) acres is planned within a five (5) year period, the total project will be referred to the State Land Use Commission for disposition. The County may consider future fifteen (15) acre phases beyond the initial fifteen (15)

acre phase, provided that at least five (5) years have lapsed between the date of the initial approval and the date of the new application, and provided further that substantial construction has been completed on the initial development. (Ord. No. 492, October 31, 1986)

Sec. 11-2.3 Form And Content Of Application.

Every application shall include the following:

(a) The legal names and addresses of all legal and equitable owners of the lands to be reclassified.

(b) The legal name and address of the Applicant. If the Applicant is not the owner, then he shall describe his relationship to the owner, and shall submit a written authorization from at least seventy-five percent (75%) of the legal and equitable owners of the lands to be reclassified authorizing the Applicant to file the application on their behalf. If the Applicant is a part-owner, but does not own seventy-five percent (75%) of the legal and equitable interest in the lands to be reclassified, then he shall submit a written authorization from such other co-owners as may be necessary to establish, together with the Applicant's interest, seventy-five percent (75%) ownership of the legal and equitable interest in the lands to be reclassified, authorizing the Applicant to file the application on their behalf.

(c) The legal description of the lands to be reclassified, the tax map keys for such lands, the total acreage to be reclassified, and maps identifying such lands and showing the proposed boundary changes.

(d) The reclassification requested, a description of the proposed development, the need for the reclassification and/or development, and the reasons for the request.

(e) Applications requesting a reclassification to an Urban District shall include, but not be limited to, the following type of facts or data:

(1) Type of urban development proposed, such as single-family, multi-family, residential, planned development, resort, commercial, industrial, or other.

(2) Preliminary data such as projected number of lots; lot-size; number of units; densities; selling price; intended market; development timetables; and projected costs.

(3) Applicant's financial condition together with latest balance sheet or income statement.

(4) What significant effects, if any, upon the environment, agriculture, recreational, historic, scenic or other resource of the area.

(5) Preliminary development plans, topographic data, drainage, soil conditions, traffic

or demographic studies, including charts, tables, analysis, and reports supporting the above data.

(6) Availability of public services and facilities such as schools; sewer; parks; water; sanitation; drainage; roads; police and fire protection; adequacy thereof, or whether public agencies providing said services or facilities would be unreasonably burdened by the proposed development.

(7) Location of proposed development in relationship to adjacent urban districts and developments whether contiguous or part of a self-contained center.

(8) Relationship to employment centers; potential for permanent employment opportunities.

(9) If residential development, whether development considers housing for all economic and social groups.

(10) County General Plan designation and whether amendments are necessary.

(11) Any unique planning or development feature; long range plans for adjacent areas or community development, changing characteristics of community or area in question.

(12) Facts to indicate why the proposed classification is necessary at this time and at this specific location.

(13) Facts indicating that the proposed classification is consistent with Chapter 205 H.R.S., and the Land Use Commission's District Regulations.

(14) An environmental impact statement, if required under Chapter 343 H.R.S. and the Environmental Impact Statement Regulations adopted thereto.

(15) If applicable, whether the proposed amendment will be in conformity with the Special Management Area requirements, Chapter 205A, Part II, H.R.S., and the rules and regulations adopted thereto.

(f) Applications requesting a classification into a rural or agricultural district classification shall provide the basic factual information that will meet the criteria for districting and classification of lands established by Section 205-2, H.R.S., and Part II and Part III of the Land Use Commission's District Regulations relating to establishment of State Land Use Districts and Land Use Regulations. All statements made to support applicant's contention that the proposed amendment is consistent with the land use law and regulations shall be supported by appropriate documentation in the form of reports, studies, maps,

data, and other information that will provide a full record and will aid the County in rendering a sound decision. The application shall also include, but not be limited to the following:

(1) What significant effects, if any, upon the environment, agriculture, recreational, historic or other resources of the area.

(2) Soil conditions, drainage conditions, demographic or ecological studies, if any.

(3) County general plan designation and whether a general plan amendment is necessary.

(4) Facts to indicate why the proposed classification is necessary at this time and at this specific location.

(5) Whether the proposal is consistent with the Interim Statewide Land Use Guidance Policy, contained in the State Land Use Commission's District Regulation 6-1.

(6) An environmental impact statement, if required, under Chapter 343 H.R.S. and the Environmental Impact Statement Regulations adopted thereto.

(7) If applicable, whether the proposed amendment will be in conformity with the Special Management Area requirements, Chapter 205A, Part II, H.R.S., and the rules and regulations adopted thereto. (Ord. No. 492, October 31, 1986)

Sec. 11-2.4 Filing And Service Of Application.

(a) The Applicant shall file an original and fifteen (15) copies of the application with the Planning Director.

(b) The Applicant shall serve a copy of the application by certified mail, return receipt requested, on all persons, other than those owners represented by the Applicant, with a property interest in the subject land shown on the real property records contained at the Real Property Division, Department of Finance, County of Kauai.

(c) The Planning Director shall serve a copy of the application on the Land Use Commission and the State Department of Planning and Economic Development. (Ord. No. 492, October 31, 1986)

Sec. 11-2.5 Application Fees.

The application shall be accompanied by a fee of One Hundred Fifty Dollars ($150.00). All publication costs of the public hearing notices for the application shall be paid from this fee. If publication costs exceed One Hundred Fifty Dollars ($150.00), then the Applicant shall be required to pay such additional costs. (Ord. No. 492, October 31, 1986)

ARTICLE 3. HEARING PROCESS

Sec. 11-3.1 Procedures.

(a) Procedures before the Planning Commission.

(1) The Planning Commission shall hold at least one (1) public hearing on any proposed application for reclassification.

(2) Applications for reclassification relating to necessary governmental or public utility developments and applications initiated by the County Council, the Planning Commission, or other State or County departments or agencies may be heard at any time during the year. All other applications shall be considered for public hearings four (4) times a year, during the months of January, April, July and October. In the event the applications received cannot all be heard in those months, the Planning Commission shall continue the hearing period to the following month or months.

(3) At any public hearing, any number of applications may be heard provided that each application is heard separately.

(4) Applications for reclassification received in an acceptable form by the Planning Commission not later than sixty (60) days prior to the hearing date shall be considered by the Planning Commission and County Council for review and action.

(5) At least twenty (20) days prior to the public hearing, the Planning Commission shall give written notice thereof to the Applicant, the Land Use Commission, and the State Department of Planning and Economic Development, and shall publish at least once in a newspaper of general circulation published in the County the time, date and place of such hearing, its purpose, and a description of the property involved.

(6) (A) In addition to the published notice, the Applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five percent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one

(1) notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

1. date;
2. time;
3. location;
4. purpose;
5. description or sketch of property involved; and
6. explanation of reclassification process with emphasis on forthcoming County Council action.

Applicant shall also provide notice as specified herein to all persons (other than those owners represented by Applicant), with a property interest in the land sought to be reclassified, as shown on the real property tax records contained at the Real Property Tax Division, Department of Finance, County of Kauai, and as shown in the application.

(B) At least seven (7) days prior to the hearing date, the Applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to whom such notices were sent. Upon the fulfillment of all the requirements of this paragraph, the requirements for notification shall be deemed to be completed.

(C) Should the Applicant fail to submit the affidavit within the time required, the public hearing shall be postponed, and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The Applicant shall be required to pay for the republication costs and shall follow the notice requirements of this section in the renotification of all persons previously notified.

(7) The Planning Department shall mail copies of the application together with other pertinent papers to persons, groups, community associations and other civic organizations that have indicated interest in the proposed reclassification for their comments.

(8) Applications for necessary governmental or public utility developments and specific applications from the County Council, the Planning Commission, or other State or County departments or agencies shall be subject to all of the provisions of Sec. 11-3.1(a) with the exception of subparagraphs (2) and (4), provided that in the consideration of comprehensive Land Use

Boundary amendments pursuant to comprehensive Development Plan Updates initiated by the County, the requirements of subparagraphs (2), (4) and (6) shall not apply. Public hearings on such applications may be heard at any time during the year.

(b) Decision by the Planning Commission.

(1) After the conclusion of the public hearing, the Planning Commission shall approve, approve with modifications, or disapprove any proposed reclassification and shall file a report with the County Council and the Applicant of its findings and decision.

(2) The Planning Commission's report shall be filed within ninety (90) days after the public hearing, or within such longer period as may be agreed upon between the Planning Commission and the Applicant. Failure of the Planning Commission to so report within the ninety (90) day period or within such longer period as may be agreed upon by the Applicant shall be deemed to be an approval of the proposed reclassification by the Planning Commission and shall be so reported in writing to the County Council by the Planning Director.

(3) In the event the Planning Commission approves the reclassification, the County Council shall act on such application for reclassification as indicated below in Sec. 11-3.1(c). However, in the event the Planning Commission denies the proposal, its decision is final except that the Applicant within fifteen (15) days after written notice of such action may in writing appeal such decision to the County Council, in which case the County Council shall hear the matter in the same manner as for an approval, except as otherwise provided herein.

(c) Procedures before the County Council.

(1) The County Council shall hold a public hearing on the application for reclassification within seventy-five (75) days after receipt (time stamp) of the Planning Commission's report or an Applicant's appeal.

(2) At least twenty (20) days prior to the public hearing, the County Council shall give written notice thereof to the Applicant, the Land Use Commission, and the State Department of Planning and Economic Development, and shall publish at least once in a newspaper of general circulation published in the County the time, date and place of such hearing, its purpose, and a description of the property involved.

(A) In addition to the published notice, the Applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the

Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five percent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one (1) notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

(1) date;
(2) time;
(3) location;
(4) purpose;
(5) description or sketch of property involved; and
(6) explanation of reclassification process with emphasis on forthcoming County Council action.

Applicant shall also provide notice as specified herein to all persons (other than those owners represented by Applicant) with a property interest in the land sought to be reclassified, as shown on the real property tax records contained at the Real Property Tax Division, Department of Finance, County of Kauai, and as shown in the application.

(B) At least seven (7) days prior to the hearing date, the Applicant shall file with the County Council an affidavit as to the mailing or delivery of such notice and a list of persons to whom such notices were sent. Upon the fulfillment of all the requirements of this paragraph, the requirements for notification shall be deemed to be completed.

(C) Should the Applicant fail to submit the affidavit within the time required, the public hearing shall be postponed, and the County Council shall reschedule another hearing within sixty (60) days of the postponed hearing. The Applicant shall be required to pay for the republication costs and shall follow the notice requirements of this section in the renotification of all persons previously notified.

These notification requirements shall not apply in the consideration of comprehensive Land Use Boundary amendments pursuant to comprehensive Development Plan Updates initiated by the County.

(3) After the conclusion of the hearing, the County Council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed reclassification or any part thereof by a majority vote of the County Council in such form as said County Council deems advisable. For applications which the Planning Commission have approved, or which have been denied and appealed, the County Council's decision shall be made within one hundred and twenty (120) days after the conclusion of the County Council's hearing or within such longer period as may be agreed upon by the Applicant.

(d) Other Provisions.

(1) When an application for reclassification is denied by the Planning Commission and no appeal is taken, or is denied by the County Council, the same or a substantially similar application may not be initiated sooner than one (1) year following such denial.

(2) With the consent of the County Council or the Planning Commission, any application for reclassification may be withdrawn upon the written application of the Applicant.

(3) The County Council or the Planning Commission, as the case may be, may by motion abandon any proceedings for a reclassification initiated by its own resolution or intention. Such withdrawal or such abandonment may be made only when such proceedings are before such body for consideration. (Ord. No. 492, October 31, 1986; Ord. No. 542, June 8, 1988)

Sec. 11-3.2 Consolidation.

The Planning Commission and the County Council may consolidate applications for reclassifications under this Chapter with applications to amend the general plan designation and/or the zoning of the subject lands. In such cases of consolidation, the procedural provisions contained in Article 3 "Hearing Process" of this Chapter shall prevail and apply to the General Plan and/or zoning amendment proceedings before the Planning Commission and the Council; provided, however, that consolidations involving General Plan amendments shall be heard only twice a year, during the months of January and July. (Ord. No. 492, October 31, 1986)

Sec. 11-3.3 Enactment By Ordinance.

The approval and enactment of any reclassification under this Chapter shall be by ordinance in accordance with

the requirements contained in Article IV of the Charter of the County of Kauai. The proceedings on such applications before the Planning Commission and the County Council shall be legislative proceedings and shall not be subject to the provisions contained in Chapter 91 of the Hawaii Revised Statutes. No intervention in the proceedings before either the Planning Commission or the County Council shall be allowed, but all persons shall be permitted to present written and verbal testimony as provided in this Chapter. (Ord. No. 492, October 31, 1986)

ARTICLE 4. RECLASSIFICATION

Sec. 11-4.1 Standards And Criteria.

In their review of any application for reclassification of district boundaries pursuant to this Chapter, the Planning Commission and the County Council shall specifically consider the following:

(a) Whether a proposed reclassification will result in a more appropriate land use pattern that will further the public necessity and convenience and the general welfare;

(b) Whether a proposed reclassification is consistent with the Kauai County General Plan, or any proposed amendment thereto which is part of a consolidated proceeding;

(c) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:

(1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

(2) It shall take into consideration the following specific factors:

(A) Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.

(B) Substantiation of economic feasibility by the applicant.

(C) Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.

(D) Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.

(3) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami

and unstable soil conditions and other adverse environmental effects.

(4) No amendment of a land use district boundary of any lands into the Urban District shall be approved unless the lands to be reclassified are contiguous to an existing Urban District. As used herein, the term "contiguous" shall refer to situations in which the land to be reclassified physically adjoins an existing urban area and is not separated from an existing urban area by lands designated other than urban. Provided, that, lands that do not physically adjoin an existing urban area because they are separated by rights-of-way for pedestrian, vehicular, railway, irrigation or utility purposes, by roads, streets or highways whether public or private, by irrigation ditches, by rivers or streams, by lakes, ponds or reservoirs shall be deemed contiguous. The purpose of this section is to insure orderly urban growth and to prevent scattered development, and the definition of "contiguous" shall be construed accordingly. The fact that applicant's property is contiguous to an urban district shall not, in and of itself, be an automatic basis for reclassification, and all other standards and criteria shall also be considered.

(5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.

(6) Lands which do not conform to the above standards may be included within this District:

(A) When surrounded by or adjacent to existing urban development; and

(B) Only when such lands represent a minor portion of this District.

(7) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.

(8) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the County finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

(d) "A" Agricultural District. In determining the boundaries for the "A" Agricultural District, the following standards shall apply:

(1) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of this Chapter.

(2) Lands with significant potential for grazing or for other agricultural uses shall be included in this District except as otherwise provided for in other sections of this Chapter.

(3) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.

(4) Lands in intensive agricultural use or lands with a high capacity for intensive agricultural use shall not be taken out of this District unless the County finds either that:

(A) such action will not substantially impair actual or potential agricultural production in the vicinity of such lands, and/or

(B) such action is reasonably necessary for urban growth.

(e) "R" Rural District. In determining the boundaries for the "R" Rural District, the following standards shall apply:

(1) Areas consisting of small farms; provided that such areas need not be included in this District if their inclusion will alter the general characteristics of the areas.

(2) Activities or uses as characterized by low density residential lots of not less than one-half (1/2) acres and a density of not more than one single-family dwelling per one-half (1/2) acre in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low density residential lots.

(3) Generally, parcels of land not more than five (5) acres; however, it may include other parcels of land, which are surrounded by, or contiguous to this District and are not suited to low density residential uses or for small farm or agricultural uses.

(f) In its review of any petition for reclassification of district boundaries pursuant to this chapter, the County shall specifically consider the following:

(1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;

(2) The extent to which the proposed reclassification conforms to the applicable district standards; and

(3) The impact of the proposed reclassification on the following areas of state concern:

(A) Preservation or maintenance of important natural systems or habitats;

(B) Maintenance of valued cultural, historical, or natural resources;

(C) Maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;

(D) Commitment of state funds and resources;

(E) Provision for employment opportunities and economic development; and

(F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups. (Ord. No. 492, October 31, 1986)

Sec. 11-4.2 Conditions.

(a) The Planning Commission may recommend, and the County Council may impose, conditions on any approved reclassification and in addition may require the Applicant to dedicate land and/or to make in-lieu monetary contributions to the Kauai County Housing Agency for the purpose of providing housing opportunities to eligible persons and families within the County. In approving an application for boundary change, the County may impose conditions necessary to uphold the general intent and spirit of the Land Use Law and Regulations and to assure substantial compliance with representations made by the Applicant in seeking the boundary amendment. Such conditions may include, but are not limited to, the following:

(1) Staging of Development. The County may require any development proposed by the Applicant to be coordinated and timed as necessary with the provision of public service systems such as schools, roads, drainage, and water services, including services provided by quasi-public utilities regulated by the Public Utilities Commission. The County shall periodically review the progress toward completion of any development proposed by the Applicant in connection

with the needs and standards of the relevant public service systems and may revise as necessary the timing schedule initially required.

(2) Connection with or Provision of Service Systems. The County may require the Applicant to connect with existing public service systems, in order to prevent scatterization, sprawl, and costly leapfrog development. As an alternative, the County may authorize the provision by the Applicant of private service systems, provided that:

(A) The Applicant has demonstrated sufficient capacity in available land, capital, and projected market share to provide adequate services and facilities on an efficient basis;

(B) The services and facilities are projected for full or near-full utilization of system capacity within a reasonable time, at a level of demand to assure a unit cost comparable to that of the public sector;

(C) There has been satisfactory consultation with the appropriate public agencies during the project planning stage and that these public agencies are agreeable to the provision of private service systems by the Applicant.

(3) Applicant's Intent, Capacity and Compliance with Representations. The County may require Applicants to submit a development schedule providing for the completion of development within a reasonable time period; to demonstrate financial, organizational and legal capacity to undertake the development that is proposed; and to offer written assurances of compliance with any representations made by the Applicant as part of the application for approval and any specific conditions attached to approval of said application.

(4) Special Conditions at the Request of State and County Agencies. In the review by state and county agencies of the petitions for boundary amendment filed with the County, the state and county agencies shall include in their recommendations, if any, special conditions that would be appropriate for the County's consideration.

(5) Dedications for Public Uses. The County may require the Applicant to dedicate land, in amounts as specified by the County, for park and school sites; public rights of way; easements for beach and mountain access; and easements for public or private service and utility systems. Land dedications required by the County shall be also subject to applicable County ordinances. The County Council may request the appropriate County agency to report periodically to the County Council on the Applicant's compliance with the dedication requirements imposed by the County Council.

(6) Dedications for Housing. The County may require the Applicant to dedicate land or make an in-lieu monetary contribution, in an amount specified by the County, for the purpose of providing low cost or affordable housing. If affordable housing conditions are included in an existing or future ordinance or if such ordinance is silent, no other affordable housing conditions shall be imposed on or agreed to by the petitioner or buyers, unless required by the State Land Use Commission, ordinance, or Planning Commission condition approved by the Council.

(7) Monitoring. The County may require all Applicants to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the County under the provisions of this section. Appropriate County and State agencies shall be informed of development approvals and asked to monitor such developments as consistent with their regular duties.

(8) Notice of Transfer. The County may require Applicants to notify the County of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the property covered by the approved application.

(b) Failure to Comply. The approval granted by the County on an application for boundary change may be reversed if the parties bound by the conditions attached to the approval fail to comply with said conditions.

(c) Applicability. Conditions, if any, imposed by the County shall run with the land and shall be binding upon the Applicant and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer.

(d) Upon the showing of good cause by the Applicant, the Planning Commission may recommend, and the County Council may approve, any modification or deletion of any of the conditions imposed. Requests for the modification or deletion of conditions shall be subject to the same procedural requirements applicable to an application for reclassification. (Ord. No. 492, October 31, 1986; Ord. No. 614, November 27, 1992)

Sec. 11-4.3 Dedicated Lands.

Notwithstanding any approval by the Real Property Division of the Department of Finance of the County of Kauai of a petition of a landowner within any district to dedicate his land for a specific ranching or other agricultural use under Section 5A-9.1, R.C.O. 1976, the Planning Commission may recommend the reclassification of, and the County Council may change, the Land Use District in which the land is situated. (Ord. No. 492, October 31, 1986)

Sec. 11-4.4 Effective Date.

A change in the State Land Use District Boundaries pursuant to this Chapter shall become effective on the date designated by the County Council in its decision. (Ord. No. 492, October 31, 1986)

Sec. 11-4.5 Notification Of Land Use Commission.

Within sixty (60) days of the effective date of any decision to amend State Land Use District Boundaries by the County Council, the decision and the description and map of the affected property shall be transmitted to the Land Use Commission, the State Department of Business, Economic Development, and Tourism, and Office of State Planning by the County Planning Director. (Ord. No. 492, October 31, 1986)

CHAPTER 11A

ENVIRONMENTAL IMPACT ASSESSMENT ON LAND DEVELOPMENT

ARTICLE 1. GENERAL PROVISIONS

Sec. 11A-1.1 Findings And Purpose.

The Council of the County of Kauai hereby finds and determines that the development and construction of new resort facilities, residential dwelling units and new commercial or industrial structures within the County may impose substantial impacts on the existing quality of life, social welfare, and ecology of the County, and threatens to have significant adverse effects on the water, land and air within and surrounding the County, and threatens to burden and overtax existing public facilities of the County which provide public services, highways, housing, police and fire protection, public utilities, water, and treatment and disposal of sanitary sewage, which thus pose a direct detrimental impact on the health, safety and general welfare of the County and its residents, and their environment.

The Council further finds that the development and construction of new resort facilities, residential dwelling units and new commercial and industrial structures within the County creates an additional burden on the fiscal ability of the County to continue to provide adequate public services and capital improvements necessary to maintain and improve the quality of government services and public facilities currently enjoyed by the people of Kauai.

The Council further finds that the implementation of the debt limitation upon the State's financial resources established by the 1978 Constitutional Amendment coupled with the severe financial constraints already placed upon the County will make it increasingly difficult to fund the necessary capital improvement projects for the County.

The Council further finds and determines that the imposition and collection of a special, nonrecurring fee upon the development and construction of new resort facilities, residential dwelling units and new commercial or industrial structures within the County is the most practical and equitable method of providing revenues with which the County may meet and resolve the serious environmental problems and burdens on existing public facilities and services created by such development and construction.

The Council further finds that the number of units in a resort complex or in a residential housing development tends to be reasonably proportionate to the physical impact on the environment and the fiscal impact on the financial resources of the County that the occupation of said units will have and on the extent of municipal services required to sustain such units and that the number of parking stalls servicing commercial buildings and the gross area of industrial buildings is a reasonable gauge of the impacts created by such buildings.

The Council further finds that it is necessary to ensure that all assessments must be expended in a manner that is consistent with the provisions of Ordinance No. 371, an Ordinance Establishing Trust Fund For Contributions By Developers (Chapter 6). Consequently, all fees collected pursuant to this Chapter shall be paid into the trust fund account and distributed in accordance therewith. (Ord. No. 396, August 11, 1980)

Sec. 11A-1.2 Definitions.

When used in this Chapter, the following words or phrases shall have the meaning given in this section unless it shall be apparent from the context that a different meaning is intended:

(1) "Gross Building Area" means the area within the surrounding exterior walls of a building. In addition, unenclosed roofed areas under the horizontal projection of the roof or floor above such as corridors, malls and lobbies which serve as a means of personnel circulation shall be considered as part of the gross building area.

(2) "Subdivision" means the division of land or the consolidation and resubdivision into two (2) or more lots or parcels for the purpose of transfer, sale, lease, or building development, and when appropriate to the context, shall relate to the process of dividing land. The term also includes a building or group of building containing or divided into two (2) or more dwelling units or lodging units. (Ord. No. 396, August 11, 1980)

Sec. 11A-1.3 Imposition.

A fee is hereby assessed upon each new subdivision and the construction of each new hotel, motel, multi-family dwelling, commercial and industrial facility within the County. (Ord. No. 396, August 11, 1980)

Sec. 11A-1.4 Payment Of Fee; Collection.

The amount of the assessment due hereunder and payment schedule shall be determined at the time of the issuance of the building permit with the exception of subdivisions of land for single-family dwellings which shall be determined and paid prior to final subdivision approval. These assessments shall be collected by the Director of Finance or his designee. (Ord. No. 396, August 11, 1980)

Sec. 11A-1.5 Disposition Of Fee.

All proceeds from the fees collected under this ordinance shall be paid into the Trust Fund established pursuant to Ordinance No. 371 (Chapter 6). (Ord. No. 396, August 11, 1980)

Sec. 11A-1.6 Other Fees.

Except as herein otherwise provided, nothing contained in this Chapter shall affect the imposition or collection of fees established pursuant to any other County ordinance, rule or regulation. (Ord. No. 396, August 11, 1980)

Sec. 11A-1.7 Other Conditions.

Excepting the provisions of Section 11A-2.1, no credit shall be given for any improvements required to be provided pursuant to conditions imposed by zoning ordinances in accordance with the authority vested in the Council by the Comprehensive Zoning Ordinance. (Ord. No. 396, August 11, 1980)

Sec. 11A-1.8 Repeal.

Section 3.025E3 of Ordinance No. 164, Comprehensive Zoning Ordinance, is hereby repealed in its entirety, provided, however, that this repeal shall have no effect on the collection or payment of assessments imposed pursuant to said section prior to the effective date of this Chapter. (Ord. No. 396, August 11, 1980)

ARTICLE 2. APPLICATION

Sec. 11A-2.1 Exemptions.

The provisions of this Chapter shall not apply to:

(1) Subdivision of land into two (2) or more lots only for the purpose of clarifying public records or adjustments of boundaries, provided that no additional

lots will be developed for the purpose of building dwelling units thereon.

(2) Subdivision of land into two (2) or more lots for agricultural purposes which will not be developed into dwelling units. The subdivider desiring such an exception shall file with the Planning Director a certified statement therefor, stating fully the grounds for the exception and that the subdivided land shall not be provided with dwelling units. These conditions shall run with the land.

(3) Government-sponsored housing projects or other public facilities. For the purposes of this Chapter, government-sponsored housing projects shall include private developments that are funded partially or wholly by federal, state, or county agencies for low- or moderate-cost housing, the criteria of which shall be established by the County Public Housing Agency.

(4) Privately developed low-cost housing projects financed entirely by private funds provided that the selling price or rental of such housing shall be in accordance with standards established by the County Public Housing Agency.

(5) Subdivision or other development necessary for public utility business by a public utility company as defined in Chapter 269-1, Hawaii Revised Statutes, provided that said public utility company uses utility poles, towers and transmission lines in providing service to the public, and provided that no additional lots will be developed for the purpose of constructing dwelling units thereon.

(6) Subdivision of buildings, as defined in Sec. 11A-1.2, for which a zoning permit has been granted in accordance with the provisions of Article 19 of the Comprehensive Zoning Ordinance, provided that a building permit is secured within twelve (12) months from the effective date of this Chapter.

(7) Commercial and industrial developments for which a zoning permit has been granted in accordance with the provisions of Article 19 of the Comprehensive Zoning Ordinance, provided that a building permit is secured within twelve (12) months from the effective date of this Chapter.

(8) Subdivision of land that has been granted preliminary approval prior to the effective date of this Chapter, provided that final approval is received within twelve (12) months of preliminary approval.

(9) The following ordinances authorizing development where a fee has been imposed by such ordinance for contribution to the County Trust Fund or in lieu of park dedication: PM-26-79; PM-29-79; PM-31-79; PM-35-79; PM-45-79; PM-52-79; and PM-56-80.

(10) Any developer who, during the course of obtaining the various governmental approvals and permits is required to provide improvements which are designated in the Capital Improvements Program and the Capital Rehabilitation Program of the County, or the Capital Improvements Program of the State, if the cost of said improvements equals or exceeds the environmental impact assessment fee levied pursuant to this Chapter, provided, that if the said improvement costs are less than the assessed fee, the developer shall pay the difference. No credit shall be given for onsite improvements which benefit the land being developed. Further, no credit shall be given for improvements which are subject to a rebate in the amount equal to such rebate. (Ord. No. 396, August 11, 1980; Ord. No. 429, July 30, 1982)

Sec. 11A-2.2 Applicability; Assessment.

The provisions of this Chapter shall apply to:

(1) An existing building approved prior to the effective date of this Chapter when such building is enlarged or altered to increase the number of dwelling units in the case of subdivisions, hotels, motels and multi-family developments or increase the gross building area in the case of commercial and industrial developments.

(2) An existing building approved prior to the effective date of this Chapter when such building is demolished and a new building is constructed in its place. This Chapter shall apply only to any additional dwelling units built in the case of subdivisions, hotels, motels and multi-family developments or the gross building area increased in the case of commercial and industrial developments.

(3) Land and building subdivisions for single-family residential purposes consisting of the first six (6) lots or units shall be assessed two hundred fifty dollars ($250) per lot or unit. One (1) lot or unit shall be exempt from assessment. Subdivision of all lots or units subsequent to the initial six (6) shall be assessed the full fee applicable to the lots or units as provided in Sec. 11A-2.2(4) below, regardless of the change in ownership of the lot or unit assessed since the first assessment.

(4) Land and building subdivisions for single-family residential purposes consisting of more than six (6) lots or units shall be assessed five hundred dollars ($500) per lot or unit. One (1) lot or unit shall be exempt from assessment.

(5) Each new hotel, motel and multi-family dwelling unit shall be assessed one thousand dollars ($1,000) per unit.

(6) Each new commercial development shall be assessed one hundred dollars ($100) per the minimum number of parking stalls serving that development as required by the Comprehensive Zoning Ordinance.

(7) Each new industrial building shall be assessed twenty-five cents (25¢) per square foot of gross building area.

(8) Any development consisting of more than one (1) use (i.e., hotel development containing commercial building area or combined commercial and industrial building areas) shall be assessed a separate fee for each such use as provided hereinabove and shall not be assessed only according to the predominant use. (Ord. No. 396, August 11, 1980)

CHAPTER 11B

WATER USE AND DEVELOPMENT PLAN

ARTICLE 1. GENERAL PROVISIONS

Sec. 11B-1.1 Purpose.

The state water code (HRS Chapter 174C) mandates the preparation and adoption of a water use and development plan by each county as part of the Hawaii water plan. (Ord. No. 568, April 27, 1990)

Sec. 11B-1.2 Definitions.

As used in this chapter, unless the context otherwise requires:

"Board" means the board of water supply for the county of Kauai.

"Commission" means the commission on water resource management.

"Community plans or community development plans" means those plans adopted by ordinance under Chapter 10, Kauai County Code 1987.

"Department of Water" means the Department of Water for the County of Kauai.

"Domestic use" means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation.

"General plan" means the General Plan adopted by Chapter 7, Kauai County Code 1987, setting forth "policies to govern the future physical development of the County."

"Ground water" means any water found beneath the surface of the earth, whether or not in perched, dike-confined, or basal supply; in underground channels or streams; in standing, percolating, or flowing condition; or under artesian pressure.

"Hawaii water plan" means the integrated program of the commission for the protection, conservation, and management of the waters of the state, with such

amendments, supplements, and additions as may be necessary, mandated by the state water code (HRS Chapter 174C).

"Hydrologic unit" means a surface drainage area or a ground water basin or a combination of the two as described in the Hawaii water plan, which shall be determined using the best available information.

"Municipal use" means the domestic, industrial, and commercial use of water through public services available to persons of a county for the promotion and protection of their health, comfort, and safety, for the protection of property from fire, and for the purposes listed under the term "domestic use."

"Person" means any individual, firm, association, organization, partnership, estate, trust, corporation, company, or any governmental unit.

"Reasonable-beneficial use" means the use of water in such quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is not wasteful and is both reasonable and consistent with the state and county land use plans and the public interest.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained waterbodies). Water from natural springs is surface water when it exits from the spring onto the earth's surface.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source as determined by the commission.

"Water" or "waters of the state" means any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

"Water source" means a place within or from which water is or may be developed, including but not limited to: (1) generally, an area such as a watershed defined by topographic boundaries, or a definitive ground water body; and (2) specifically, a particular stream, other surface water body, spring, tunnel, or well related combination thereof. (Ord. No. 568, April 27, 1990)

Sec. 11B-1.3 Consistency Requirements.

The water use and development plan shall be consistent with (1) the water resource protection and water quality plans of the Hawaii water plan; (2) county land use plans and policies including general plans, community plans and zoning;

and (3) state land use classification and policies. (Ord. No. 568, April 27, 1990)

ARTICLE 2. WATER USE AND DEVELOPMENT PLAN

Sec. 11B-2.1 Contents Of Water Use And Development Plan.

The county water use and development plan shall include, but not be limited to: (1) Status of county water and related land development including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints; (2) Future land uses and related water needs; and (3) regional plans for water developments including recommended and alternative plans, costs, adequacy of plans, and relationship to the water resource protection plan and water quality plan. (Ord. No. 568, April 27, 1990)

Sec. 11B-2.2 Water Use And Development Plan Preparation.

The department of water shall be responsible for the preparation and maintenance of the Kauai county water use and development plan. (Ord. No. 568, April 27, 1990)

Sec. 11B-2.3 Adoption Of The Water Use And Development Plan.

The "Kauai Water Use and Development Plan" and "Executive Summary" dated February 1990, is incorporated herein by reference, and is hereby adopted. (Ord. No. 568, April 27, 1990)

Sec. 11B-2.4 Application Of The Water Use And Development Plan.

The water use and development plan shall serve as a guideline by agencies or departments of the county (a) in approving or recommending to other agencies the use or commitment of the county's municipal, public water resources, and (b) in using public funds to develop water resources to meet existing or projected future demands on the public water system as set forth in the water use and development plan. (Ord. No. 568, April 27, 1990)

Sec. 11B-2.5 Amendment.

The Board of Water and the Department of Water shall have the authority to amend the water use and development plan to reflect changes in hydrologic or other scientific information and land use. Amendments for any other reason shall be by ordinance. (Ord. No. 568, April 27, 1990)

Sec. 11B-2.6 Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this chapter shall not affect the validity of any other part of this chapter which cannot be given effect without such invalid part or parts. (Ord. No. 568, April 27, 1990)